DRAFT STAFF REPORT ON

Voting Irregularities in Florida During the 2000 Presidential Election

(Not Official Unless and Until Approved by a Majority of the Commissioners)

Introduction

> *No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this [Voting Rights] Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.* [1]

BACKGROUND

The November 7, 2000, presidential election and its aftermath became the focus of international attention on the application of America's election laws and policies. The state of Florida's electoral process took center stage as the world paused to observe the unfolding drama of identifying the next President of the United States. During this time, countless allegations of voting irregularities arose as to whether eligible voters were hindered from voting for the presidential candidate of their choice, and if votes that were cast were properly tabulated.

When the U.S. Commission on Civil Rights (Commission) receives allegations of voting irregularities, it is obligated to investigate.[2] Accordingly, the Commission initiated an investigation into these issues. In the area of voting rights, the Commission is specifically authorized to investigate allegations of deprivations "as a result of any pattern or practice of fraud; of the right of citizens of the United States to vote and have votes counted."[3] As part of its investigation, fact-finding hearings were held in Tallahassee and Miami, Florida. The Commission's authority to conduct hearings emanates from the 1957 legislation, which established it as an independent bipartisan federal agency of the United States government. The Commission is charged by federal law:

1. to appraise the laws and policies of the Federal Government;
2. to serve as a national clearinghouse for information—all in connection with discrimination or the denial of equal protection of the laws of this nation, because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.

The Commission's investigation in Florida was intended to determine if there were unequal allocations of election resources throughout Florida's localities, and whether there were isolated or systematic practices and/or policies that prevented Florida's residents from voting. Moreover, the investigation focused on who was responsible for making the critical decisions regarding resource allocations for Election Day activities, the reason these decisions were made, and the effect these judgments had on specific communities. The investigation included public hearings in Tallahassee on January 11–12, 2001 and in Miami on February 16, 2001. In total, hundreds of witnesses were interviewed by Commission staff, more than 100 witnesses testified under oath before the Commission, including approximately 65 witnesses who were selected for the two hearings due to their knowledge of and/or experience with the issues under investigation. The Commission heard testimony from top elected and appointed state officials, including the governor, the secretary of state, the attorney general, a representative of DBT Online (a ChoicePoint company that was involved in the state-sponsored removal of felons from Florida's voter registration lists), the director of the Florida Division of Elections, the general counsel of the Florida Elections Commission, and other current (and former) Florida state and county officials.

During the hearing, Florida citizens, registered voters, and experts on election reform issues, election laws and procedures and voting rights provided sworn testimony. Also, the chairperson and executive director of the Select Task Force on Election Reforms, established by Florida Governor John Ellis Bush (Jeb Bush), testified before the Commission. Various county supervisors of elections, county commission officials, law enforcement personnel, and a state's attorney also presented their sworn statements. In addition to the scheduled witnesses, the Commission extended an opportunity for concerned persons, including Members of Congress and the Florida legislature, to submit relevant testimony under oath. Furthermore, the Commission subpoenaed documents from witnesses that contained pertinent information that could assist with this investigation, in order to augment submitted testimony. These witnesses produced more than 118,000 pages of relevant documents, computer discs, CD-ROMs, and tapes of data.

After the hearing phase of this investigation, the staff reviewed testimony, posed various interrogatories to a number of witnesses and examined their responses to these interrogatories, conducted a deposition of a hearing witness at the request of Commissioners, conducted supplemental research on area of law and fact, and performed an extensive review of the subpoenaed documents.

During the course of this investigation, Chairperson Mary Frances Berry sent a letter to Governor Jeb Bush expressing her deep disappointment with his failure to "address the most serious problems that occurred in Florida during the 2000 elections."[4] Chairperson Berry was referring to a statement of priorities that Governor Bush presented during the opening of the Florida legislative session. She indicated that his support for voting technology reforms in Florida was necessary and a step in the right direction. She emphasized, however, that "[t]hese measures standing, alone are insufficient to address the significant and distressing issues and barriers that prevented qualified voters from participating in the recent presidential election."[5]

At the Commission's March 9, 2001 meeting, Commissioners approved and released a statement on the status of this investigation. The Commissioners reported that "voter disenfranchisement appears to be at the heart of the issue."[6] The status report offered a preliminary assessment of the evidence by the Commissioners. It identified an array of problems including, but not limited to, differences in resource allocations "that may have operated so that protected groups may have had less of an opportunity to have their votes counted." [7] The statement expressed the hope of Commissioners that "Florida officials, as well as officials in other jurisdictions—where barriers existed, will promptly resolve these major problems that occurred on their watch, instead of hoping with the passage of time the public will forget."[8]

The Commissioners also agreed at this meeting to hold a future hearing in Florida to obtain testimony from state and local officials in order to assess what legislative changes have been proposed or enacted at the state and local levels, and to report to the public on what progress has been made.

The day before the Commission's May 4, 2001, meeting, the Florida legislature announced it agreed upon a legislative package that would overhaul the state's voting system. The Commission issued a statement commending the approval of Florida electoral reform legislation that "addresses many of the issues presented to the Commission during its investigation that included hearings conducted in Florida in January and February 2001."[9] Striking a cautionary note, however, Chairperson Mary Frances Berry pointed out, "We are all cognizant of the fact that not all areas of concern are covered, such as the need for language and special needs assistance. We know also that this legislation can only be effective if the implementation matches the legislature's intent to eliminate the problems."[10] The Commission also renewed its commitment to "travel to Florida to assess the impact of the legislation and to encourage appropriate distribution of resources to eliminate the well-publicized difficulties that were experienced in the last election."[11] On May 9, 2001, the Florida Election Reform Act was signed into law by Governor Jeb Bush.

In the final stages of this investigation, the Commission followed its procedures by conducting legal sufficiency, defame and degrade, and editorial policy board reviews. Affected agencies were afforded an opportunity to review on applicable portions of this report. The final report was scheduled for completion and release in June 2001.

OBJECTIVE

The Commission's report analyzes the Voting Rights Act of 1965 (and its subsequent amendments) (VRA), and other applicable statutes, not to determine if violations of these laws occurred since the Commission does not have enforcement powers, but as a backdrop for an analysis of the civil rights implications of the Commission's factual findings. Obviously, some analysis of the rights afforded to United States citizens pursuant to the VRA was an important component of the investigation. Among other provisions, the VRA provides that:

- All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State…, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.[12]
- No person acting under color of law shall in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.[13]

Based on a complete review of the record and employing the appropriate statistical analysis, the Commission examined whether Florida's legal voters experienced disenfranchisement during the November 2000 presidential election, as a result of disparate treatment or based on apparently neutral factors that resulted in denying the right to vote. At one time establishing a violation of the VRA required proof of intentional discrimination.[14] Subsequently, section 2 of the VRA Amendments of 1982 expanded the protections afforded under this law.

The essence of this change in the law was to make it clear that a "specific intent to discriminate" is not required to establish a violation of the VRA. Rather, the proper test is whether the "result" of the election practice is one that is not equally open to minority voters or which gives minority voters less opportunity to participate in the electoral process.[15]

Additionally, the Commission recognizes that other factors could have contributed to voter disenfranchisement in Florida during the November 2000 presidential election. For example:

- **The Western Florida Time Zone Controversy**: On the evening of November 7, 2000, various television networks and cable stations announced the closure of Florida's polls, exit poll outcomes, and/or the results of the presidential and Florida Senate races at 6:00 p.m. Central Standard Time, when polls in the Western Florida Panhandle did not officially close until 7:00 p.m. Central Time (8 p.m. Eastern Standard Time).[16]
- **Absentee Military Ballots:** Florida absentee ballots from overseas members of the nation's military were delivered to the state via the U.S. mail service, but questions arose as to their validity because of their late arrival, improper certification, incomplete applications, illegible ballots, improper certification by elections officials, or the lack of required postmarks.[17]
- **Complaints of Voter Fraud:**[18] There were allegations that Florida residents voting in the November 7 election, had not been eligible to do so.

The Commission has historically focused its attention on the expansion of voting rights issues and related litigation.[19] While recognizing that the above factors do raise concerns of voting irregularities, the Commission did not receive many complaints or evidence during its Tallahassee and Miami hearings pertaining to how these issues created possible voter disenfranchisement in Florida.[20] Accordingly, this investigation instead examines other factors that affected voting opportunities in Florida.

Chapter One of this report, "Voting Systems Controls and Failures," provides a brief discussion of the VRA. It also discusses evidence of voter

disenfranchisement and how this disenfranchisement affected the rights of people of color to vote in the 2000 presidential election. Chapter Two, "First Hand Accounts of Voter Disenfranchisement," provides summaries of the testimony of people who witnessed what occurred at polling places on November 7. This chapter includes details of such issues as the poll workers' inability to contact county supervisors of elections, polling places being moved without notice and police presence at or near polling places.

Chapter Three, "Responsibility Without Accountability?" focuses on state election accountability and responsibility issues including a discussion of who has the ultimate authority for insuring full participation in the Florida election process. This chapter discusses the requirements of voting eligibility list maintenance. The next chapter, Chapter Four, "Resource Allocation," examines the following election topics: financial election resources for the state of Florida, the state's allocation of financial resources, counties' allocation of financial resources, the state's efforts to establish election uniformity throughout Florida, Election Day preparations, and Election Day resources.

Chapter Five, "The Reality of List Maintenance," discusses how Florida list maintenance obligations were implemented and how these affected the voters. Chapter Six, "Accessibility Issues," examines special needs assistance concerns and how individuals with disabilities and those with language needs were affected during the November 7 election.

Chapter Seven, "Casting a Ballot," focuses on Florida election law procedures for voting in two broad categories—the use of affidavits to resolve problems arising at the polling place and the use of absentee ballots. Chapter Eight, "The Machinery of Elections," provides information on the types of equipment used on Election Day, the effectiveness of this voting machinery, a contextual framework for election technology improvements, and voting machinery experts' perspectives. Chapter Nine, "Where Do We Go from Here?" discusses the findings and recommendations of the Commission. The Epilogue provides a brief overview of the pertinent legislative and other governmental actions that have occurred since the Commission began its investigation.

This report is the final step in the Commission's examination of the testimonial and documentary evidence, laws, processes, procedures, and methods of resource allocation in Florida that may have resulted in a significant number of voters who were either denied the right to vote, or did not have their vote counted in the November 2000 presidential election. Moreover, this report includes an analysis of relevant evidence that contributes to the Commission's findings and policy recommendations.

[1] 42 U.S.C. § 1973i(a) (2000).

[2] 42 U.S.C. § 1975a(a)(1) ("The Commission *shall* investigate….") (emphasis added).

[3] 42 U.S.C. § 1975a (a)(1)(B) (2000). "The Commission shall investigate allegations in writing under oath or affirmation relating to deprivations—because of color, race, religion, sex, disability, or national origin." 42 U.S.C. § 1975a(a)(1).

[4] *See* Mary Frances Berry, chairperson of the U.S. Commission on Civil Rights, letter to Governor Jeb Bush, March 8, 2001 (hereafter cited as Chairperson Berry letter).

[5] Ibid.

[6] *See* " Status Report on Probe of Election Practices in Florida During the 2000 presidential election," U.S. Commission on Civil Rights, March 9, 2001.

[7] Ibid.

[8] Ibid.

[9] *See* "US. Commission on Civil Rights Commends Florida Leaders' Proposed Overhaul of Voting System," U.S. Commission on Civil Rights, May 4, 2001.

[10] Ibid.

[11] Ibid.

[12] 42 U.S.C. § 1971(a)(1) (2000).

[13] 42 U.S.C. § 1971(a)(2)(A).

[14] *See* Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973). The *Zimmer* test required plaintiffs to prove discriminatory intent or that the government's actions resulted in a denial of equal access to the political process. In *City of Mobile v. Bolden* , 446 U.S. 55 (1980), the United States Supreme Court determined that proof of discriminatory intent was required pursuant to the 14th and 15th Amendments, and section 2 of the Voting Rights Act. *See* Chapter One for a more extended discussion of this issue.

[15] *See* Discussion in Chapter One.

[16] U.S. Congress, Senate, Committee on Governmental Affairs, *Federal Elections* , Testimony of Daniel B. Perrin, executive director, Committee for Honest Politics, Federal Document Clearing House, Inc., May 3, 2001; Jim Abrams, "No Intentional Bias in Early Calls," AP Online, Feb. 8, 2001. Florida's Panhandle is located in the Central Time Zone, while the remaining portions of the state are in the Eastern Time Zone. Nevertheless, the CBS, ABC, NBC, FOX, and CNN networks made announcements that erroneously stated or implied that Florida's election was concluded at 6 p.m. Central Time. As a result, there have been several accounts indicating that a number of Western Florida voters in the Panhandle did not vote during the evening of November 7, since they assumed their polling locations would not be open until the scheduled closing time of 7 p.m. Central Time.

[17] Tara Copp, "Congress to Eye Changes in Military Voting," Scripps Howard News Service, Apr. 3, 2001; Thomas B. Pfankuch, "Bill Revises Overseas Balloting Proposal Would Ensure Absentee Votes Counted," *The Florida Times-Union* (Jacksonville, FL), Apr. 3, 2001, p. B-1 (hereafter cited as Thomas Pfankuch, "Bill.").

[18] *See* *Voter Fraud Notice* , (May 15, 2001) < http://election.dos.state.fl.us/fraud/index.shtml>. The Florida Department of State's Division of Elections defines voter fraud as "intentional misrepresentation, trickery, deceit, or deception, arising out of or in connection with voter registration or voting, and the prescribed offenses set forth in Chapter 104, Florida Statutes." Ibid.

[19] *See generally* U.S. Commission on Civil Rights, *Statutory Report for 1961, Volume 1: Voting* (1961); U.S. Commission on Civil Rights, *Voting in Mississippi* (1965) (analyzed findings of field investigations and a hearing in Mississippi); U.S. Commission on Civil Rights, *The Voting Rights Act of 1965: The First Months* (1965); U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975); U.S. Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (1981) (examined the status of minority voting rights in jurisdictions covered by the original provisions of the 1965 act); U.S. Commission on Civil Rights, Clearinghouse Publication - *A Citizen's Guide to Understanding the Voting Rights Act* (1984); U.S. Commission on Civil Rights, State Advisory Committee Report, *Voter Registration in Louisiana Parishes* (1989); U.S. Commission on Civil Rights, State Advisory Committee Report, *Reversing Political Powerlessness for Black Voters in South Carolina: Will Single-Member Election Districts Lead to Political Segregation?* (1991).

[20] *See generally* Linda Ward, Public Session Witness, Testimony, Tallahassee Verified Transcript, Jan. 12, 200, p. 351; Enos Schern, president of Citizens of Dade United, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 529 (Ms. Ward's and Mr. Schern's testimonies related to alleged voter fraud activity in Seminole and Dade counties); Raymond Jackson, president of the North Florida Branch of the NAACP, Public Session Witness, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 359 (expressed concerns that elections officials did not count overseas military ballots that were delivered in Okaloosa and Walton County); Senator Darryl Jones, Senate District 40, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 429 (suggested permitting voting through use of the internet for overseas military personnel); June Littler, chairperson of the Florida Advisory Committee, Tallahassee Verified Transcript, Jan. 11, 2001, p. 22 (testified that Florida citizens have informed her that they do not support Florida's polls closing at different times, due to the state's two time zones); Katherine Harris, secretary of state, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 249 (Secretary Harris described the state's procedures for investigating voter fraud complaints).

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Chapter One

Voting Systems Controls and Failures

> *No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. [1]*

In order to ensure that every eligible citizen in Florida has an opportunity to exercise his or her right to vote, the state established a system of checks and balances that extends from the local poll worker to the governor. This system of control has been codified in many of the provisions of the election laws of the state of Florida, and, in part it is intended to help guarantee that the rights conveyed to voters by the Voting Rights Act of 1965 will be protected. During the November 2000 election, wide-ranging errors and inadequate resources caused a significant breakdown in the state's plan, which resulted in a variety of problems that permeated the election process in Florida. Large numbers of Florida voters faced frustration and anger as they endured excessive delays, misinformation, confusion, and many were denied the right to vote. While some maintain that what occurred in Florida was nothing out of the ordinary, but rather was simply amplified by the closeness of the election, the overwhelming evidence provided to the Commission proves otherwise.

It is impossible to determine the total number of voters who were turned away from the polls or deprived of their right to vote. It is clear that the 2000 presidential election generated a large number of complaints about voting irregularities in Florida. The Florida attorney general's office alone received more than 3,600 allegations, 2,600 complaints and 1,000 letters.[2] In addition, both the Democratic and Republican parties received many complaints from Floridians who either could not vote or experienced difficulty when attempting to vote.[3] These widespread complaints prompted Florida's Governor Jeb Bush to sign an executive order creating a Select Task Force on Election Procedures, Standards and Technology.[4] The task force was developed to examine the concerns that had been raised about Florida's election process and to recommend reforms where necessary.[5]

Several advocacy group representatives testified about the disproportionate number of complaints that they received from their constituents in Florida. Jackson Chin, associate counsel at the Puerto Rican Legal Defense and Education Fund in New York City, explained that his group's preliminary investigation revealed that certain election practices in central Florida might have led to the widespread voter disenfranchisement of up to several thousand Latino voters.[6] D.P. Misra, former president of the Association of Indians in America, and Venghan Winnie Tang, president of the South Florida chapter of the Organization of Chinese Americans, both testified that immigration and language assistance problems prevented many Asians and East Indians from being able to vote in Florida.[7]

Other advocacy groups have formed coalitions to investigate or to take action against the election problems that surfaced in Florida. For instance, the NAACP has filed a federal class-action lawsuit on behalf of voters in Florida who allege that their right to vote in the November 7, 2000, election was unlawfully denied or abridged.[8] The Florida Justice Institute has joined with the ACLU of Florida and Florida Legal Services to develop statewide electoral reform that focuses on the concerns of Florida's racial and language minorities and those who live in poverty, "considerations that are probably long overdue in this state."[9] According to JoNel Newman of the Florida Justice Institute, "[w]hen new or vulnerable voters from traditionally disenfranchised groups are wrongly prevented from going to the polls and from voting, they feel often a humiliation and a stigma or a disaffection that has the effect in many cases of causing them never to return to the voting booth."[10]

The complaints from those denied the right to vote during the 2000 Florida presidential election were anything but isolated or episodic. Credible evidence shows many Floridians were denied the right to vote. Analysis of the testimony and evidence gathered by the Commission shows that these denials fell most squarely on persons of color. In order to place this discussion in a legal context it is important to briefly discuss some of the non-discrimination provisions of the Voting Rights Act of 1965.

THE VOTING RIGHTS ACT OF 1965

The Voting Rights Act of 1965 (VRA) was enacted under Congress's authority to enforce the Fifteenth Amendment's proscription against voting discrimination. Although voting rights legislation was first enacted in 1870 to enhance the effectiveness of the 15th Amendment, voting rights continued to be a legal fiction for people of color—particularly African Americans—until the passage of the VRA, which was signed into law on August 6, 1965.[11]

The VRA prohibited, among other things, the use of literacy tests and other discriminatory "tests and devices" in states where less than 50 percent of the voting age population was registered to vote or had voted in the November 1964 elections. These tests and devices had, for generations, effectively disenfranchised African Americans in the South. In 1965, people of color still met many obvious barriers that prevented them from exercising their right to franchise, such as poll taxes, literacy tests, and intimidation tactics.

Congress passed the VRA in hopes of effectively combating the discriminatory voting practices that were used against non-whites.[12] Initially, the VRA focused on voter registration.[13] The Act was aimed at subtle, as well as obvious, state action that had the effect of denying citizens their right to vote because of their race.

Section 2 of the Voting Rights Act

Section 2 of the Voting Rights Act is a codification of intent of the 15th Amendment and forbids racial discrimination with respect to voting rights. It provides:

> No voting qualifications or prerequisites to voting, or standard, practice, or procedure, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.[14]

Since its enactment in 1965, the VRA has been instrumental in providing people of color with access to the political process and in overcoming more than a century of racially discriminatory election laws and policies. Specifically, section 2 outlaws practices that deny people of color electoral participation by diluting the effectiveness of their votes.[15]

Until 1980, a party alleging a section 2 violation could establish a claim by demonstrating, based on the totality of the circumstances, that the challenged electoral procedure had the result of denying a minority group equal opportunity to participate in the political process and to elect their preferred candidates.[16] There was no requirement that the disenfranchised voter prove a specific intent to deny them the right to vote because of their race.

In 1980, the Supreme Court held that a plaintiff must show discriminatory intent to prove a section 2 violation of vote dilution based on constitutional claims.[17] Congress immediately responded to this decision by amending section 2 in 1982.[18] The **amendment** provides in pertinent part:

> A violation … of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.[19]

Congress intended the amendment to "clarify the standard of proof in establishing violations of the Voting Rights Act" [20] and to reverse the Supreme Court's holding that created an impossible burden that was "contrary to what Congress intended."[21] The 1982 amendments do not preclude plaintiffs from introducing evidence of discriminatory intent, but now afford plaintiffs the option of demonstrating that the challenged electoral procedure has the effect of denying a protected class equal access to the political process and electing representatives of their choice.

In its amendment of section 2, Congress reaffirmed that discrimination could be established using a results test and that under this test there was no requirement to prove discriminatory intent. Congress described seven factors to be considered in determining whether, under the results test, discrimination has occurred.[22] The results test, also known as the "totality of the circumstances" test, only requires the plaintiff to prove that a challenged election process results in a denial or an abridgment of the right to vote.[23] This amendment restored previous Supreme Court precedent, allowing violations of section 2 to be established by demonstrating abridgement of voting rights by totality of the circumstances or intentional discrimination.

Under the VRA, as amended, a violation of section 2 may be established by either showing intentional discrimination or that the totality of the circumstances "results" in a section 2 violation. Evidence of discriminatory intent is not limited to direct evidence—intent may be demonstrated by the impact of the challenged action on minorities, the ability to foresee that impact, the historical background of the challenged action, the sequence of events leading up to the challenged action, and the legislative history.[24] "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by African American and white voters to elect their preferred representatives."[25] A person attempting to prove a violation of the VRA "must either prove [discriminatory] intent or alternatively, must show that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process."[26]

Under the totality of the circumstances standard, success does not depend on an algorithm; rather, a violation may be established by the court's weighing of the factors as outlined by Congress in amending the VRA. "There is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other."[27]

Accordingly, as the evidence presented to the Commission is discussed, the proper analysis is not to look at individual facts or witnesses and attempt to draw conclusions, from these isolated facts but rather, as the law requires, these facts must be analyzed to determine whether there was intentional discrimination or whether under the "totality of circumstances" standard the state's actions resulted in racial minorities being denied the right to vote.

The Commission heard from experts regarding potential violations of the VRA during the Florida presidential election.

Professor Allan Lichtman, applying the results test, said "[t]he key is whether a system, regardless of why it was adopted or why it was held in place, has the effect of diminishing minority voting opportunities."[28] Professor Lichtman explained:

> We do not have to demonstrate an intent to discriminate. We do not have to demonstrate that there was some kind of conspiracy against minorities or that anyone involved in the administration of elections today or yesterday had any intent whatever to discriminate against minorities, because indeed under the Voting Rights Act, practices can be illegal so long as they have the effect of diminishing minority opportunities to participate fully in the political process and elect candidates of their choice.[29]

Professor Lichtman testified that a violation occurs if the following two criteria are satisfied:

1. if there are "differences in voting procedures and voting technologies between white areas and minority areas";[30] and
2. if voting procedures and voting technologies used in minority areas "give minorities less of an opportunity to have their votes counted."[31]

Using a *New York Times* study showing that voting systems in Florida's poorer, predominantly minority areas are less likely to allow a voter to cast a properly tallied ballot,[32] Professor Lichtman testified:

> In other words, minorities perhaps can go to the polls unimpeded, but their votes are less likely to count because of the disparate technology than are the votes of whites.... That is the very thing the Voting Rights Act was trying to avoid that, for whatever reason and whatever the intent, the Voting Rights Act is trying to avoid different treatment of whites and minorities when it comes to having one's vote counted.... If your vote isn't being tallied, that in effect is like having your franchise denied fundamentally.[33]

Professor Lichtman testified that one remedy in such a case would be to equalize the technology across all voting places in the state of Florida—"to have technologies equalized such that there are no systematic correlations between technologies and whites and minorities and a minority vote is as likely to be tallied as a white vote."[34] The Professor acknowledged this would require spending additional funds in certain parts of the state.[35]

Professor Darryl Paulson testified he did not believe *intentional* discrimination occurred in Florida against people of color during the November 7, 2000, vote—meaning "some sort of collusion among public officials, some sort of agreement in principle, some sort of mechanism to impose" discrimination.[36] However, Professor Paulson agreed with Professor Lichtman on the voter spoilage issue, testifying that the "real scandal" in Florida was "the inequities that existed from county to county. Disparities between wealthy and poor counties were reflected in the types of voting machinery used. Poor counties, whether in Florida or elsewhere, have always had a disproportionate number of votes not counted."[37]

TRENDS OF WIDESPREAD VOTE DILUTION

Not every denial of the right to vote or the abridgement of this right is subject to a "results" analysis. For example, if the only evidence is a person being told by an election official that he or she could not vote because of the color of his or her skin, this would not be subject to a "results" analysis but obviously would be compelling evidence of intentional discrimination. In those cases the only evidence that exists is the testimony of those affected and the credibility of their testimony.

Quantitative evidence reflecting the actual number of voters and the race of all the voters who were denied the right to vote does not exist. The only evidence that exists is the testimony of those who have stated publicly that they were denied the right to vote and the credibility of their testimony. This is precisely the type of testimonial evidence that the courts usually hear in discrimination claims.

In other instances there is quantitative evidence that shows a disturbing trend of disenfranchisement related to race. Two clear examples of this evidence are the number of spoiled ballots in counties with substantial minority populations and the state's use of purge lists.[38]

Spoiled Ballots

An analysis of the incidences of spoiled ballots (votes cast but not counted) shows a correlation between the number of registered African American voters and the rate at which ballots were spoiled. The higher the percentage of African American residents and of African American voters, the higher the chance of the vote being spoiled.

To make comparisons across counties and determine the relationship between spoiled ballots, race, and ethnicity, the Commission calculated correlations.[39] Data on spoiled ballots—which includes both overvotes and undervotes for president[40]—was collected by the *Orlando Sentinel* and updated by the Collins Center for Public Policy, Inc.[41] Information on registered voters and voters by race (white, African American, other, and unknown), was provided for each county by its elections supervisor and the secretary of state of Florida.[42] For ease of comparison, race and ethnicity were analyzed as percentages of the total population.

Correlations are used to determine relationships among variables. The stronger the correlation, the more likely the association between two variables does not occur by chance. However, correlations cannot indicate cause and effect. To further explore the relationship among race and voter disenfranchisement, and to control for spuriousness and effects of other variables, additional analyses, such as regression analyses, can more fully explain how the variables interact. Nonetheless, correlation coefficients provide a useful estimate of the interdependence among the data presented in this report.

The relationship between race and voter disenfranchisement is particularly evident when looking at the issue of spoiled ballots. The Commission's statistical analyses shows that the percentage of spoiled ballots[43] is positively correlated with both the percentage of the population that is African American and the percentage of the population that is a member of a minority group. Thirty-four percent of the variation in the percentage of spoiled ballots across counties can be explained by the size of the African American population in the counties.[44] Twenty-eight percent of the variation in the percentage of spoiled ballots is explained when considering the percentage of the population that is a member of a minority group.[45] Further, the percentage of the population that is white is negatively correlated with the percentage of spoiled ballots.[46] In other words, race may be one factor in explaining why ballots were spoiled in Florida counties.[47]

These relationships can best be seen when comparing the counties with the highest percentage of spoiled ballots to counties with the highest minority populations (see Table 1-1). For example, Gadsden County, which had the highest spoilage rate of 12.4 percent, also has the largest African American population, at 63 percent. Indeed, considering the top 10 counties with the highest percentage of African American residents, or the top 10 counties with the highest percentage of African American voters, nine out of ten of the counties have spoilage rates higher than the Florida average of 2.93 percent.[48] The only county with a substantial minority population that did not have a spoilage rate above the Florida average is Leon County.[49] Conversely, with respect to the 10 counties with the highest percentage of white residents and those with the highest percentage of white voters, only two counties have spoilage rates higher than the Florida average.

Table 1-1. Top 10 Counties with Various Population Characteristics

(showing in bold/italics spoilage rates higher than the statewide average)

Highest % of White Residents	Highest % of Black Residents	Highest % of Minorities	Highest % of Black Voters	Highest % of Minority Voters	Highest % of White Voters	Highest % Living in Poverty
Pasco	**Gadsden**	**Miami-Dade**	**Gadsden**	**Gadsden**	Holmes	Hardee
Citrus	**Jefferson**	**Gadsden**	**Jefferson**	**Miami-Dade**	**Dixie**	**Hamilton**
Hernando	**Madison**	**Jefferson**	**Madison**	**Jefferson**	**Gilchrist**	**Gadsden**
Charlotte	**Hamilton**	**Hendry**	**Hamilton**	**Madison**	Martin	Holmes
Sarasota	**Jackson**	**Madison**	**Duval**	Leon	Sarasota	**Lafayette**
Collier	**Duval**	**Hamilton**	Leon	Osceola	Citrus	**Dixie**
Santa Rosa	Leon	**Hardee**	**Jackson**	**Hamilton**	Pasco	**De Soto**
Monroe	**Union**	**Duval**	**Miami-Dade**	**Duval**	Santa Rosa	**Madison**
Holmes	**Gulf**	Hillsborough	**Escambia**	**Hendry**	Lafayette	**Union**
Martin	**Bradford**	**Jackson**	**Taylor**	Orange	Hernando	Calhoun

Sources for data presented in the table are: (1) population data based on Census Bureau estimates for 1999 — U.S. Bureau of the Census, "Quick Facts," accessed at <http://www.quickfacts.census.gov>; and (2) data on registered voters by race as provided by the secretary of state for Florida. *See* Appendix I.

Note: For the purposes of this analysis, the population of persons who are members of minority groups is defined as the total population minus the white, non-Hispanic population. Percentage of African American voters based on the number of registered voters in a county who are African American.

On a practical level this means that persons living in a county with a substantial African American or people of color population are more likely to have their vote spoiled or discounted than persons living in the rest of Florida. Conversely, persons living in a county with a substantial white population have less chance of having their vote discounted than the average Florida resident. This data alone does not prove unlawful discrimination. It provides one piece of evidence, considering the "totality of the circumstances," which starts to prove the Florida election was not "equally open to participation" by all.

Refined Statistical Analysis of Vote Dilution

Based on the Commission's initial statistical analysis showing a correlation between race and the rate at which ballots were rejected, it was determined that a more refined statistical analysis was warranted. The Commission requested that Dr. Allan Lichtman, a voting rights expert who testified at the Commission's Miami hearing,[50] examine this issue and perform appropriate statistical analyses. Dr. Lichtman was to determine whether the rejection of ballots during the 2000 Florida presidential election had a disparate impact on the votes cast by African Americans. In doing this examination, Dr. Lichtman was asked to consider all unrecorded ballots—both undervotes (ballots not recorded for the lack of a recognized vote) and overvotes (ballots not recorded for including more than one recognized vote).[51] The focus of his analysis was whether African Americans were more likely than other voters to have their ballots invalidated during the November 2000 presidential election.[52]

Methodology and Data

The database for this study included county-level election returns for the presidential election of 2000 in Florida as well as the numbers by county of ballots cast, undervotes, overvotes, and unrecorded votes. Fifty-four of Florida's 67 counties, encompassing 94 percent of ballots cast in 2000,

separately recorded undervotes and overvotes. The database included identification of voting system by county and county-level statistics for a variety of social, economic, and political variables, including race and education. The racial data included the percentage of African American registered voters, based on 2000 voter registration data. The database also included precinct-level data for three of Florida's largest counties: Miami-Dade, Duval and Palm Beach counties. This precinct-level data included unrecorded votes, undervotes, overvotes, and voter registration by race, based on 1998 voter registration data.[53]

Florida election returns, voting registration data, and county-by-county lists of voting technology were obtained from the Web site of the Florida Division of Elections, Department of State. Information on unrecorded votes was obtained from the governor of Florida's select task force report on the Florida 2000 presidential election, *Revitalizing Democracy in Florida.* [54]

Dr. Lichtman used simple descriptive statistics as well as the standard statistical method of regression analysis[55] to compare the racial composition of counties and precincts to rates of overall unrecorded votes, overvotes, and undervotes. He also used ecological regression[56] that provides county-level and precinct-level estimates of the percentage of African Americans and non-African Americans casting unrecorded votes as well as either overvotes or undervotes.[57] Ecological regression procedures were recognized as appropriate for voter analysis by the U.S. Supreme Court in *Thornburg v. Gingles* .[58]

For the precinct-level data of Palm Beach, Miami-Dade and Duval counties, rates of ballot rejection for African Americans and non-African Americans can also be examined through a technique termed "extreme case" analysis,[59] which examines the rejection rates of ballots including both undervotes and overvotes in precincts that are heavily comprised of registrants that are either African American and non-African American. The extreme case results will not correspond exactly with the results of ecological regression analysis, because it applies only to some of the precincts within a jurisdiction and those precincts examined include at least some members of other ethnic groups. While not identical, it should closely mirror the pattern of results found in ecological regression. Extreme case analysis involves no inferential procedures. It simply tallies the actual rejection rates, as well as rates of overvoting and undervoting in the precincts chosen for the analysis. The technique of extreme case analysis is applied to precinct-level data in Miami-Dade, Palm Beach and Duval counties with a cutoff rate of precincts that are either 90 percent or more African American in their voter registration or 90 percent or more non-African American in their voter registration.

Summary of Detailed Statistical Analysis

In Florida's 2000 election, about 2.9 percent of all ballots cast (about 180,000 ballots out of slightly more than 6 million ballots cast) did not contain a vote that could be counted as a vote for president. Most of these invalid ballots were recorded as either overvotes or undervotes, with overvotes outnumbering undervotes by nearly two to one.[60] Counties that separately recorded overvotes and undervotes rejected about 107,000 ballots as overvotes and about 63,000 ballots as undervotes.

Looking at the entire state using county-level data and at Miami-Dade, Duval, and Palm Beach counties using precinct-level data, both sets of data demonstrated that African Americans were far more likely than non-African Americans to have their ballots rejected in the 2000 Florida presidential election. As illustrated by Appendix II-A, statewide there is a strong positive correlation between the percentage of African American registrants in a county and the percentage of rejected ballots. The linear correlation (termed R) between the percentage of ballots rejected in the presidential election and the percentage of African Americans among voters[61] is .50, with a squared correlation of (R^2) of .25. This means that when we look at the variation in the ballot rejection rates for each county in Florida, about one quarter of that variation can be explained solely by knowing the percentage of African Americans who were registered to vote in that county. This relationship is statistically significant at levels far beyond the conventional standards used in social science.[62]

One obvious question is presented by this data: Is there some other factor that better explains this disparity in ballot rejection rates? In short the answer is no. This statistically significant county-level correlation between race and ballot rejection rates cannot be attributed to the educational level of African Americans in Florida. A multiple regression analysis that controlled for the percentage of high school graduates and the percentage of adults in the lowest literacy category failed to diminish the relationship between race and ballot rejection or to reduce the statistical significance of the relationship.

In a very small part, the county-level relationship between race and rates of ballot rejection results from the greater propensity of African American registered voters to live in counties with technologies that produce the greatest rates of rejected ballots.[63] About 70 percent of African American registrants resided in counties using technology with the highest ballot rejection rates—punch cards and optical scanning systems recorded centrally—compared with 64 percent of non-African American registrants. Counties using punch card or optical scanning methods recorded centrally rejected about 4 percent of all ballots cast, compared with about .8 percent for counties using optical scanning methods recorded by precinct. The vast majority of rejected votes were recorded in counties using punch cards or optical scanning methods recorded centrally. Such counties included about 162,000 out of 180,000 unrecorded votes in Florida's 2000 presidential election. These counties that used punch cards or optical scanning technology recorded centrally included 65 percent of all ballots cast in Florida's 2000 presidential election, but 90 percent of rejected ballots.

As illustrated in Appendix II-B, within the group of counties using punch card or optical scanning technology recorded centrally—that account for about 90 percent of rejected ballots—there is a strong, statistically significant relationship between race and rejected ballots. This correlation between race and ballot rejection is even stronger than the correlation between race and ballot rejection for all counties. The linear correlation between the percent of ballots rejected in the presidential election and the percentage of African Americans among voters within the counties using punch cards or optical scanning machinery recorded centrally is .56, with a squared correlation of (R^2) of .31, a stronger relationship between race and rejected ballots than for the state overall. This means that nearly one-third of the county-by-county variation in the rates of rejected ballots within this group of counties can be predicted solely by knowing the racial composition of the counties. This relationship is statistically significant at levels far beyond the conventional standards used in social science.[64]

When the counties using the technology with the lowest ballot rejection rates are examined, the correlation between race and ballot spoilage is substantially reduced but not eliminated. There remains a statistically significant relation between race and the rate at which ballots are spoiled even when the best technology is used. The linear correlation between the percent of ballots rejected in the presidential election and the percentage of African Americans among registrants within the counties using optical scanning machinery recorded by precinct is .28, with a squared correlation of (R^2) of .08, a weaker relationship between race and rejected ballots than for the state overall. This means that slightly less than one-tenth of the county-by-county variation in the rates of rejected ballots within this group of counties can be predicted solely by knowing the racial composition of the counties. The relationship is not statistically significant at conventional standards used in social science. In summary, while the type of technology used accounts for some of the relationship between race and the rate at which ballots are rejected, there remains a statistically significant relationship even after education is considered and the type of voting system is taken into account.

These correlations, however, suggestive of a strong relationship between race and ballot rejection, pertain only to county-level relationships. They do not by themselves provide estimates of the ballot rejection rates for African American and non-African American voters included for the entire state. The ecological regression technique does provide these estimates for the state overall. As reported in Chart 1-1 and Table 1-2, the results are striking. For the entire state, the rates of rejection for votes cast by African American was an estimated 14.4 percent, compared with a rate of 1.6 percent for votes cast by non-African Americans. The greatest discrepancy is for overvotes with an estimated rejection rate of 12.0 percent for votes cast by African Americans, compared with an estimated rate of 0.6 percent for votes cast by non-African Americans.

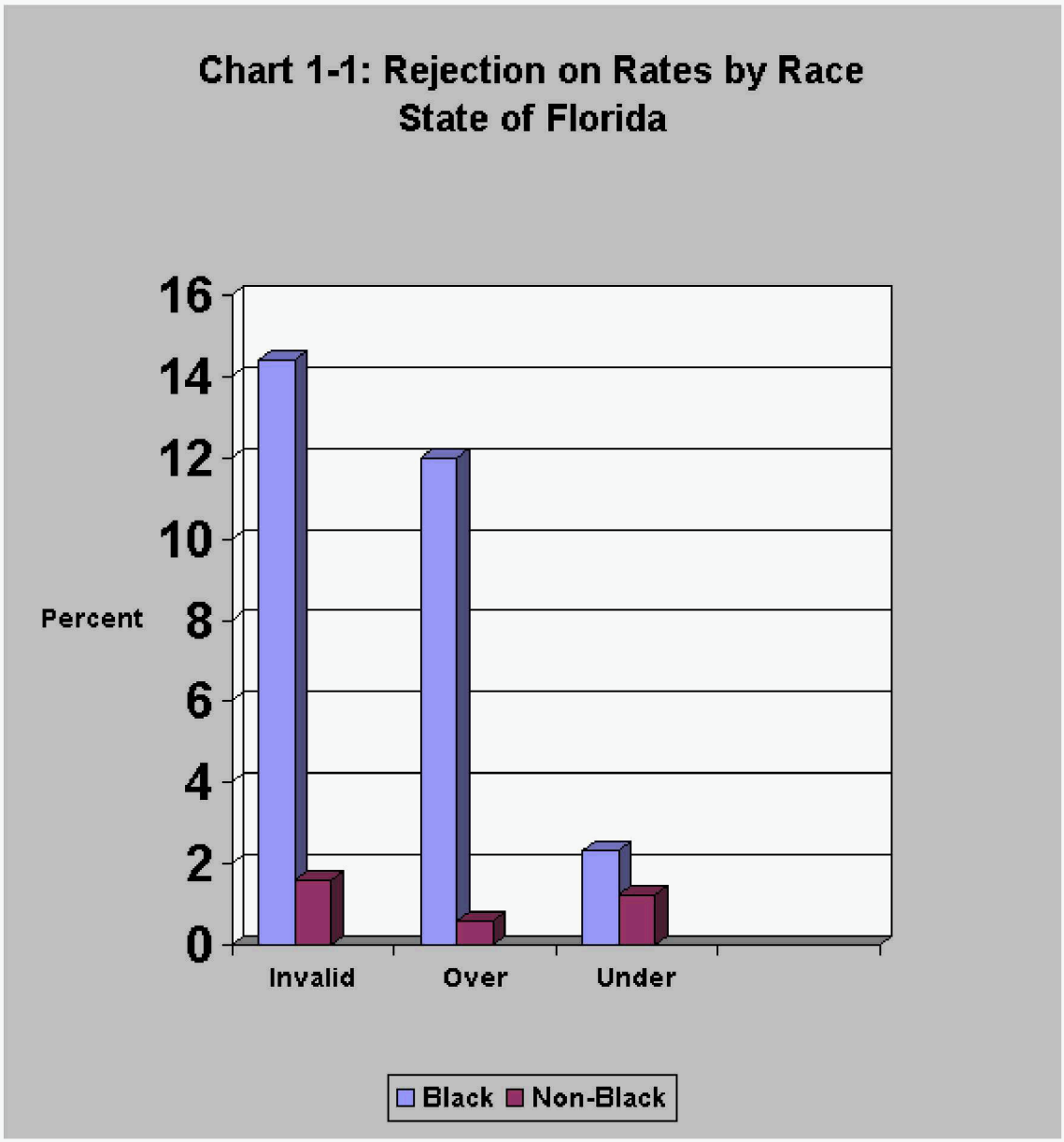


Table 1-2: Ecological Regression Estimates of Statewide Ballot Rejection Rates by Race

INVALID VOTES*			OVERVOTES		UNDERVOTES	
PUNCH CARD & CENTRAL RECORD COUNTIES	BLACK VOTERS	NON-BLACK VOTERS	BLACK VOTERS	NON-BLACK VOTERS	BLACK VOTERS	NON-BLACK VOTERS
	19.4%	2.2%	17.1%	.8%	2.4%	1.3%
PRECINCT RECORD COUNTIES	BLACK VOTERS	NON-BLACK VOTERS	BLACK VOTERS	NON-BLACK VOTERS	BLACK VOTERS	NON-BLACK VOTERS
	5.2%	.4%	2.5%	.2%	2.1%	.1%
ALL COUNTIES COMBINED	BLACK VOTERS	NON-BLACK VOTERS	BLACK VOTERS	NON-BLACK VOTERS	BLACK VOTERS	NON-BLACK VOTERS
	14.4%	1.6%	12.0%	.6%	2.3%	1.2%

* The rates for rejected votes is not exactly equal to the sum of rates for overvotes and undervotes. some invalid votes were not subdivided into either of these two categories. Also, 13 counties do not separate record overvotes and undervotes. Estimates for all counties are weighted means of estimates for punch card and central record and for precinct record counties.

To further refine this analysis, precinct data for Duval, Miami-Dade and Palm Beach counties were examined. These counties have substantial numbers of African Americans. Duval County, with a 9.2 ballot rejection rate, had a much higher rate than the 4.0 average for punch card counties. Dade County had rejection rate of 4.4 percent—close to the punch card average. Palm Beach County had an intermediate rejection rate of 6.4 percent. Taken together, the three counties included about 85,000 rejected ballots, about 47 percent of the statewide total. Precinct by precinct rejection rates and African American percentages for each county are reported in Appendices II-C, II-D, II-E. For these graphs, with large numbers of precincts, the graphs also include the linear regression line to portray with clarity the relationship within the graph between race and ballot rejection.

As indicated by the results of ecological regression analysis reported in Charts 1-2, 1-3 and 1-4, and Table 1-3, the estimated rejected rates derived from precinct-level data in these three counties confirm the findings derived from county-level data for the entire state. In Duval, Miami-Dade, and Palm Beach counties, as in the state overall, African American were far more likely than non-African Americans to have their ballots rejected.

For Duval County, as demonstrated in Chart 1-2, the overall the rate of rejection for votes cast by African Americans was an estimated 23.6 percent, compared with a rate of 5.5 percent for votes cast by non-African Americans. The greatest discrepancy is for overvotes with an estimated rejection rate of 20.8 percent for votes cast by African Americans, compared with an estimated rate of 4.1 percent for votes cast by non-African Americans. For Dade County, as demonstrated by Chart 1-3, the overall the rate of rejection for votes cast by African Americans was an estimated 9.8 percent, compared with a rate of 3.2 percent for votes cast by non-African Americans. The greatest discrepancy is again for overvotes, with an estimated rejection rate of 7.2 percent for votes cast by African Americans, compared with an estimated rate of 1.9 percent for votes cast by non-African Americans. For Palm Beach County, as demonstrated in Chart 1-4, the overall the rate of rejection for votes cast by African Americans was an estimated 16.3 percent, compared with a rate of 6.1 percent for votes cast by non-African Americans. The greatest discrepancy is for overvotes, with an estimated rejection rate of 14.3 percent for votes cast by African Americans, compared with an estimated rate of 3.9 percent for votes cast by non-African Americans.[65]

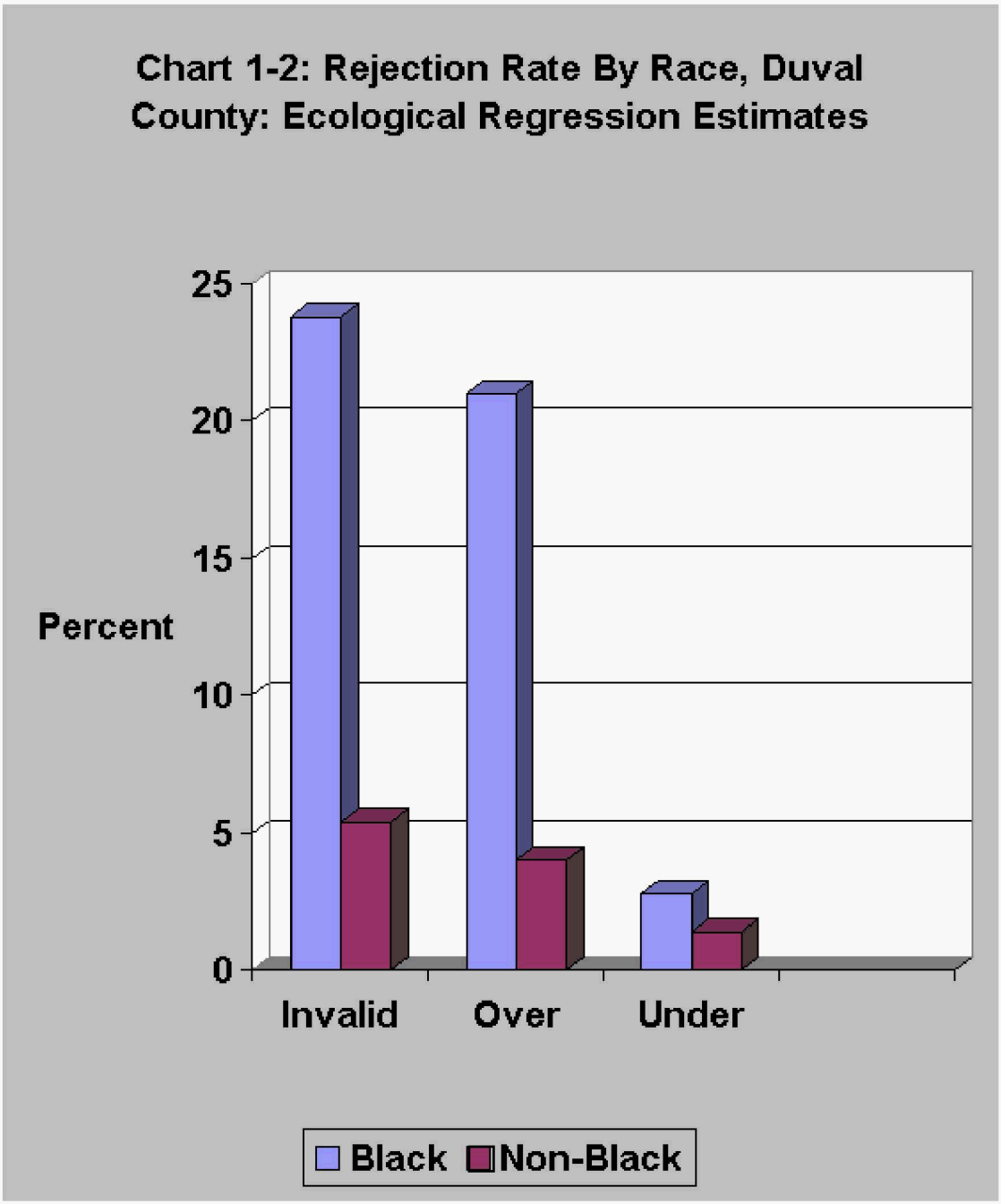
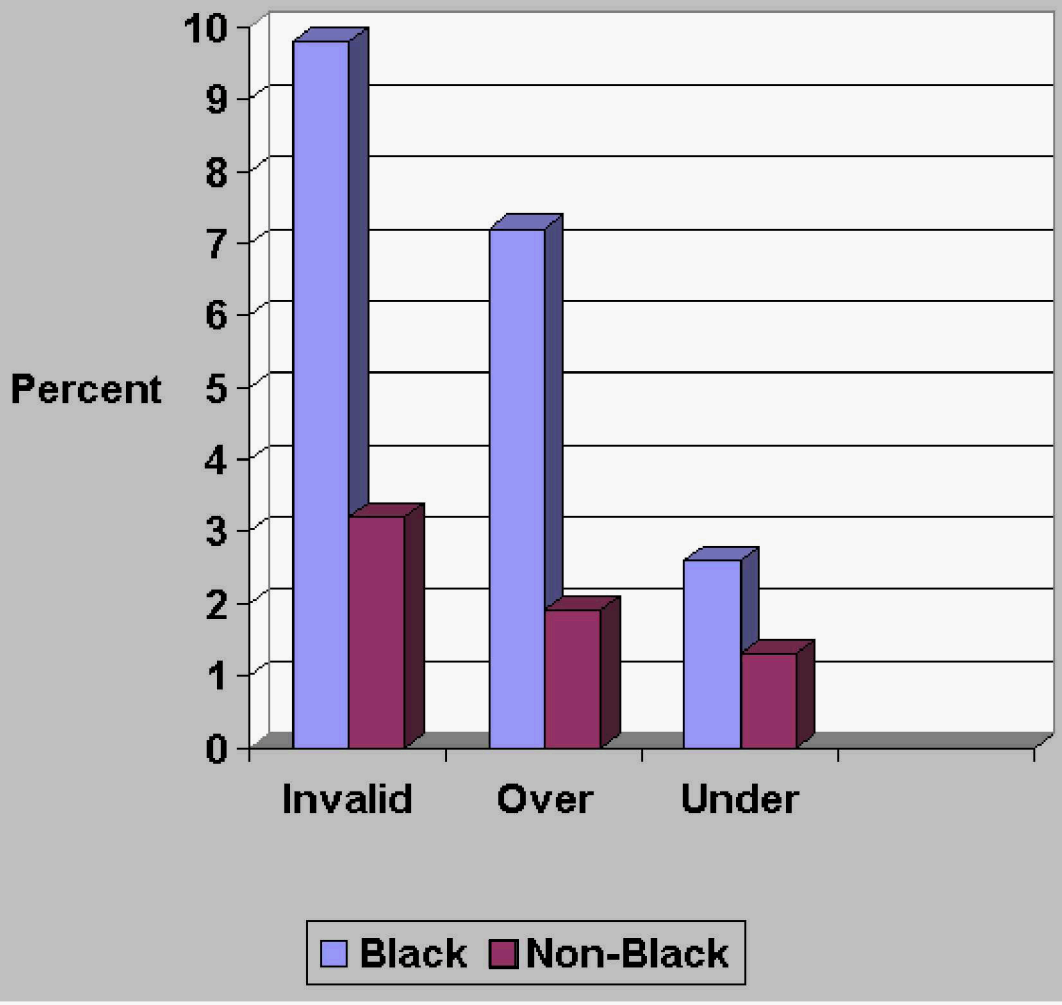

Chart 1-2: Rejection Rate By Race, Duval County: Ecological Regression Estimates
Percent
25
20
15
10
5
0
Invalid
Over
Under
Black
Non-Black

Chart 1-3: Rejection Rates By Race, Miami-Dade County: Ecological Regression Estimates



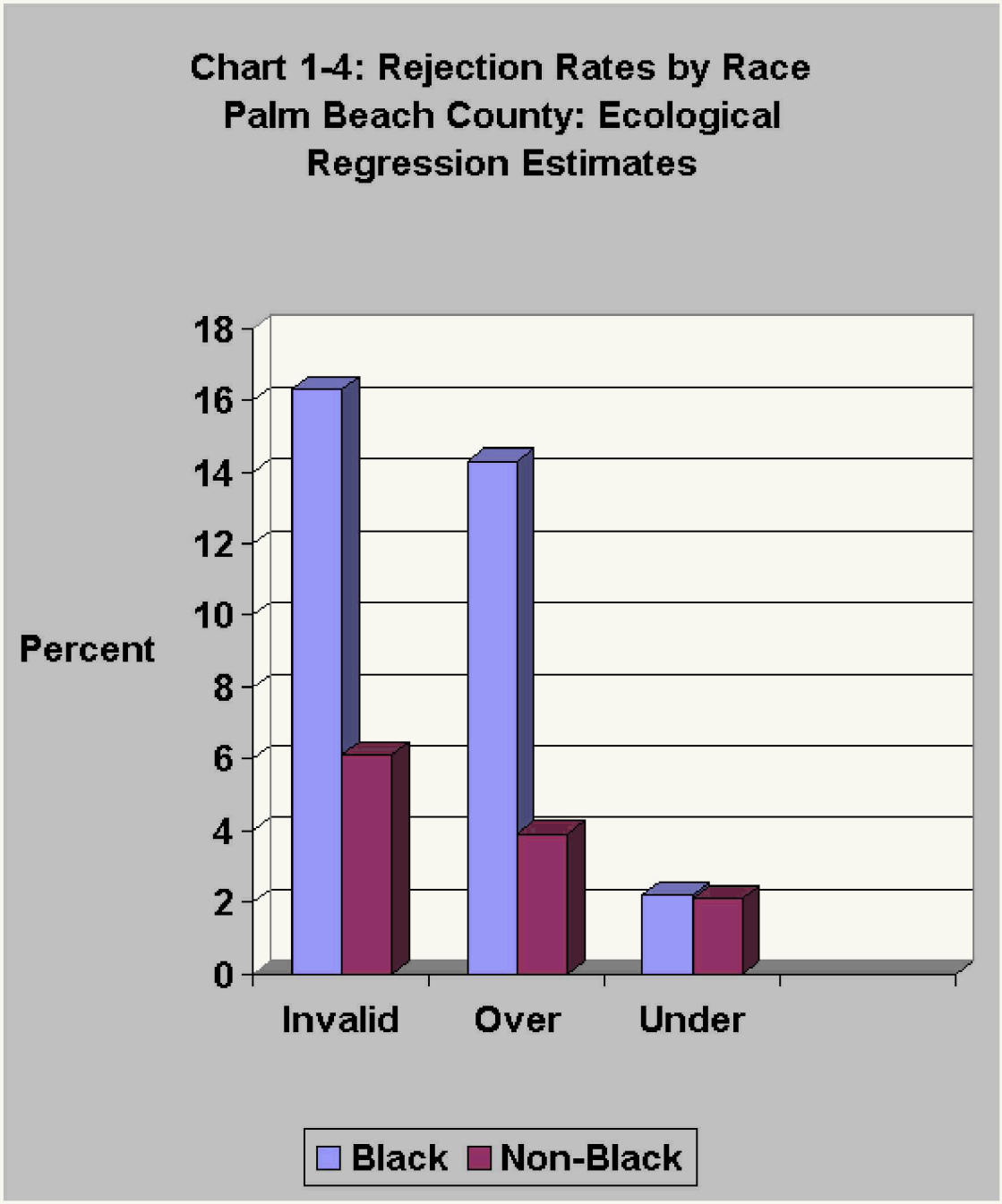

Chart 1-4: Rejection Rates by Race
Palm Beach County: Ecological
Regression Estimates
Percent
18
16
14
12
10
8
6
4
2
0
Invalid
Over
Under
Black
Non-Black

Table 1-3: Ecological Regression and Extreme Case Analysis of Duval, Miami-Dade and Palm Beach County Ballot Rejection Rates by Race						
Ecological Regression Results						
Invalid Votes			**Overvotes**		**Undervotes**	
Duval County	Black Voters	Non-Black Voters	Black Voters	Non-Black Voters	Black Voters	Non-Black Voters
	23.6%	5.5%	20.8%	4.1%	2.8%	1.4%
Dade County	Black Voters	Non-Black Voters	Black Voters	Non-Black Voters	Black Voters	Non-Black Voters
	9.8%	3.2%	7.2%	1.9%	2.6%	1.3%
Palm Beach County	Black Voters	Non-Black Voters	Black Voters	Non-Black Voters	Black Voters	Non-Black Voters
	16.3%	6.1%	14.3%	3.9%	2.2%	2.1%
Extreme Case Results						
Invalid Votes			**Overvotes**		**Undervotes**	
Duval County	90%+ Black Precincts	90%+ Non-Black Precincts	90%+ Black Precincts	90%+ Non-Black Precincts	90%+ Black Precincts	90%+ Non-Black Precincts
	22.1%	5.8%	19.2%	4.3%	2.9%	1.4%
Dade County	90%+ Black Precincts	90%+ Non-Black Precincts	90%+ Black Precincts	90%+ Non-Black Precincts	90%+ Black Precincts	90%+ Non-Black Precincts
	9.1%	3.2%	6.6%	1.9%	2.5%	1.3%
Palm Beach County	90%+ Black Precincts	90%+ Non-Black Precincts	90%+ Black Precincts	90%+ Non-Black Precincts	90%+ Black Precincts	90%+ Non-Black Precincts
	16.1%	6.2%	13.8%	4.0%	2.3%	2.2%

As demonstrated by Charts 1-5, 1-6, and 1-7 and Table 1-3, the results of extreme case analysis for 90 percent plus African American and non-African American precincts confirm the findings of ecological regression analysis. For Duval County, as demonstrated by Chart 1-5, in precincts that were 90 percent or more African American in their voter registration the overall rate of rejection was 22.1 percent, compared with a rate of 5.8 percent for precincts that were 90 percent or more non-African American in their voter registration. For Miami-Dade County, as demonstrated by Chart 1-6, the overall rate of rejection for votes cast by African Americans was an estimated 9.1 percent, compared with a rate of 3.2 percent for votes cast by non-African Americans. As reflected in Chart 1-7, in Palm Beach County the overall rejection rate for votes cast by African Americans was an estimated 16.1 percent compared with 6.2 percent in the non-African American precincts.

Chart 1-5: Rejection Rates by Race, Duval County: Results for 90%+ Black and 90%+ Non-Black Precincts

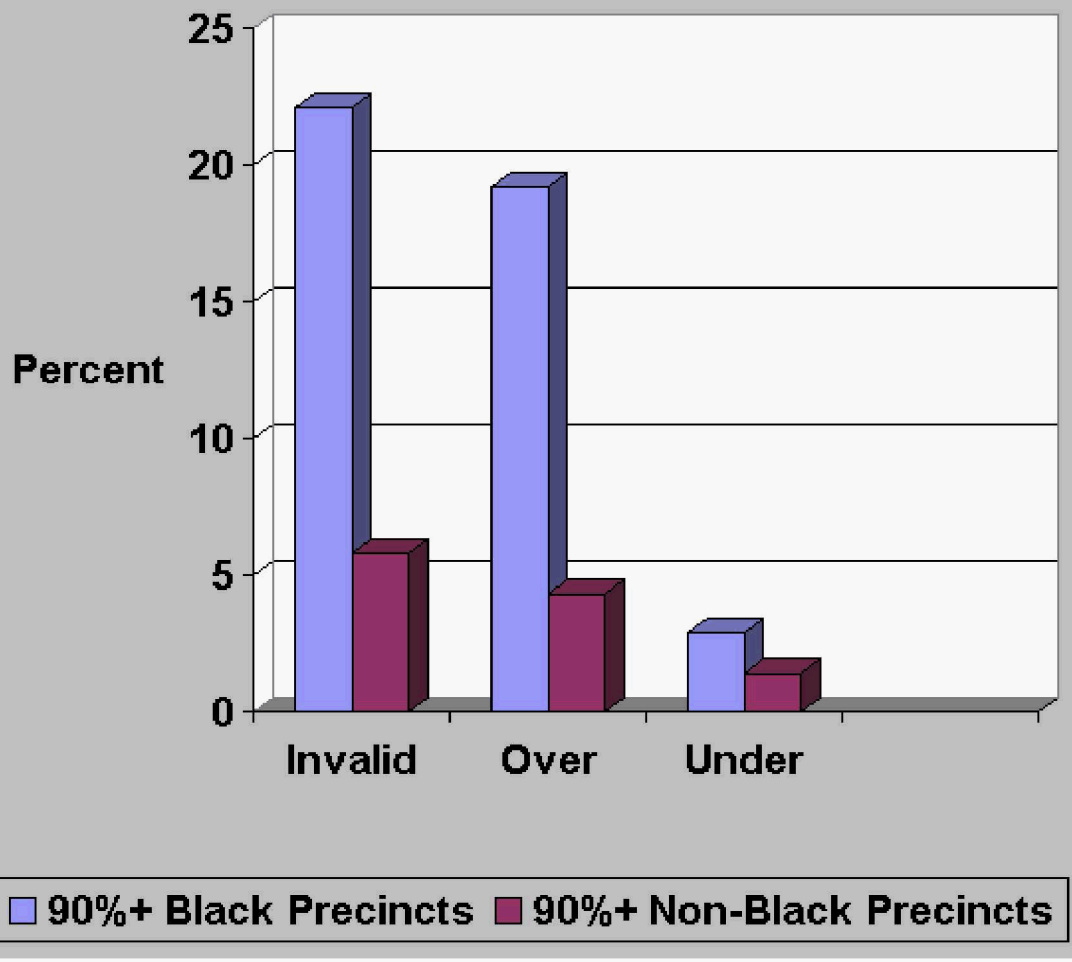
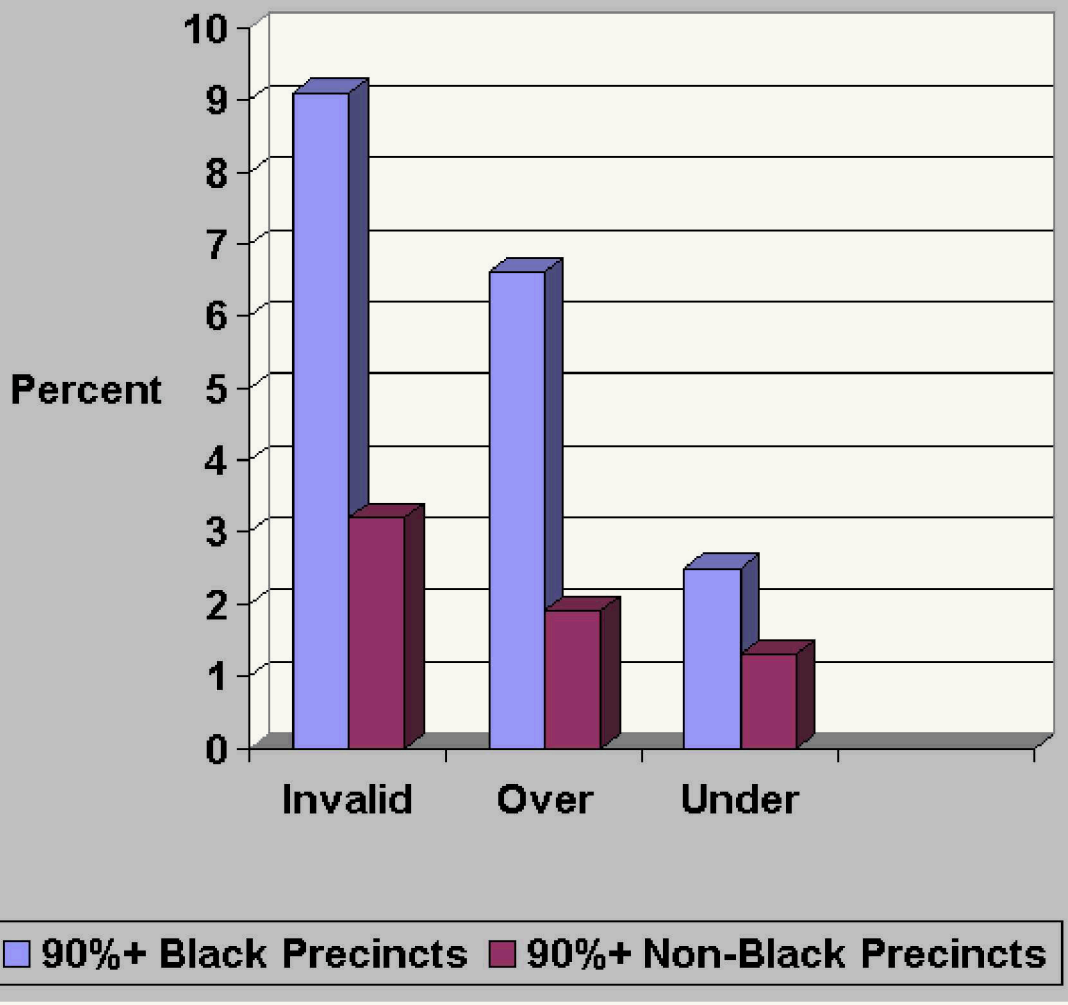
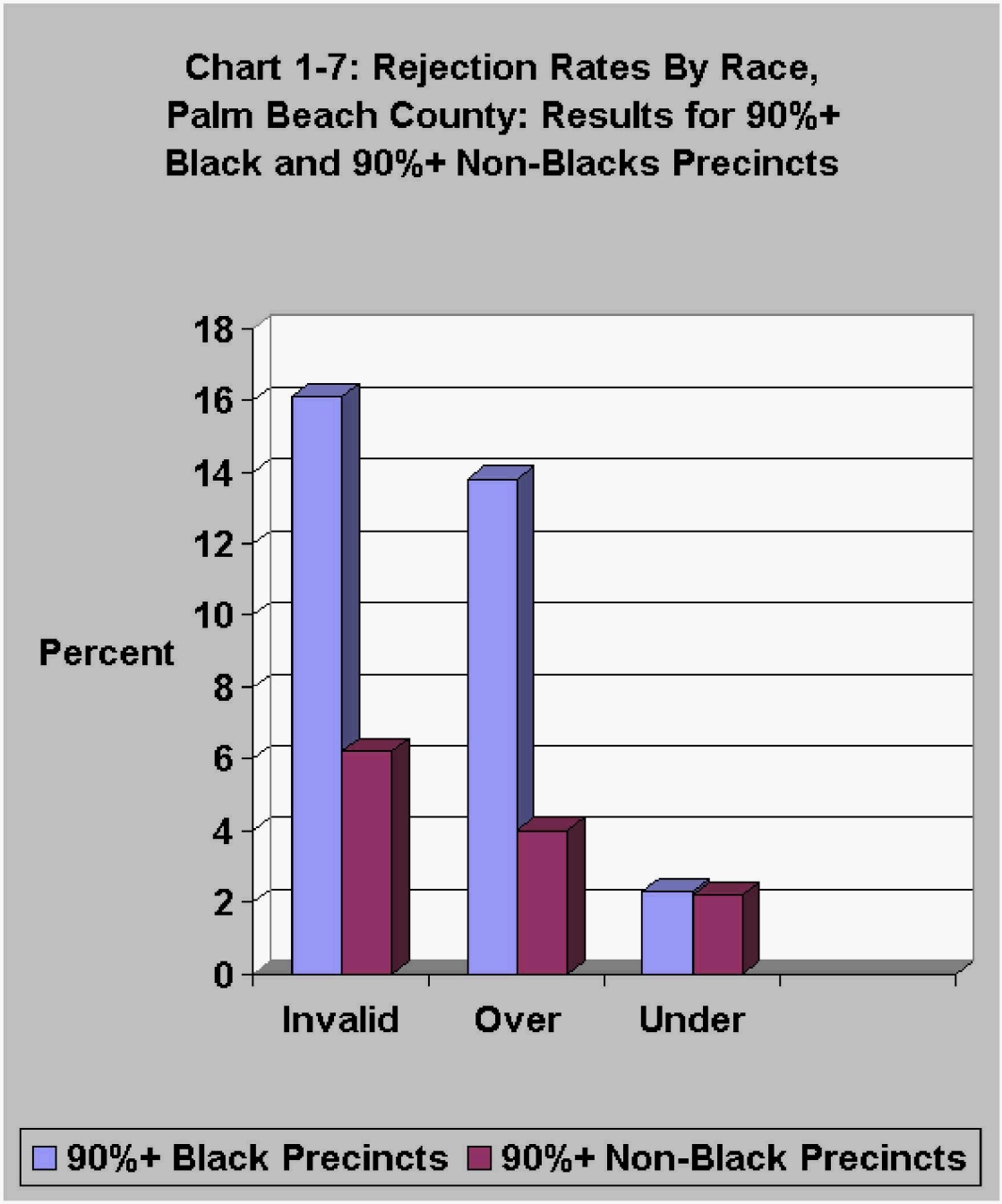


Chart 1-6: Rejection Rates by Race, Miami-Dade County: Results for 90%+ Black and 90%+ Non-Black Precincts





In the presidential election of 2000, for Palm Beach, Duval, and Miami-Dade counties as well as for the state overall, the percentage of African Americans among voters with rejected ballots was far greater than the African American percentage of all voters. Although the statewide results are estimates derived from county-level data that should be interpreted with caution, the wide disparity they reveal between rejection rates for blacks and non-blacks are confirmed by the precinct level analysis for Duval, Miami-Dade and Palm Beach counties.[66] The greatest disparities were found not for the undervotes that have been the focus of media attention, but for overvotes – voting for more than one candidate. Overall, about twice as many Florida ballots were rejected in the 2000 presidential election as overvotes than as undervotes.

These discrepancies in small part reflect the greater concentration of African Americans compared with non-African Americans in counties using the technologies that produce the greatest percentage of rejected ballots. The evidence from Duval, Miami-Dade, and Palm Beach counties indicates that major racial disparities in ballot rejection rates remain with counties using punch card technologies. Within Duval County, based on precinct-level information, statistical estimates show that African American voters were more than four times more likely than white voters to have their ballots rejected in the 2000 election. Within Dade County, based on precinct-level information, statistical estimates show that African American voters were more than three times more likely than white voters to have their ballots rejected. Within Palm Beach County, based on precinct-level information, statistical estimates show that African American voters were nearly three times more likely than white voters to have their ballots rejected. In the three counties, the rate of rejected ballots by African Americans ranged from about 10 percent to about 24 percent. For all three counties combined, the rate of rejected ballots averaged about 15 percent—meaning that one out of every seven African Americans that entered the polling booth in these counties had his or her ballot rejected as invalid. These results closely mirror the county-level findings for the state overall.

Part of the problem of ballot rejection for African Americans in Florida can be solved by requiring the adoption an optical scanning system recorded by precinct for all counties in the state. Based on the 2000 experience, a uniform system of the technology, like optical scan systems tabulated at the precinct level rejection, would reduce the number of invalid ballots for both African Americans and non-African Americans. However, the use of this technology would not eliminate the disparity between the rates at which ballots cast by African Americans and whites are rejected. County-level estimates indicate that even in counties using optical scanning methods recorded by precinct, the rejection rate for ballots cast by African Americans was still about 5 percent for African Americans compared with well under 1 percent for non-African Americans as shown in Table 1-2.

Technology alone is not the answer to racial discrepancies in ballot rejection. The results of these analyses demonstrate that technological change must be accompanied in all counties by effective programs of education for voters, for election officials, and for poll workers. Obviously, sufficient resources must be devoted to the maintenance of voting technology and steps must be taken to ensure clear and comprehensive voter instructions, easily understandable ballots, and adequate resources to assist voters at all polling places.

The Impact of the Purge List

A similar effect upon African Americans is presented based on an analysis of the state mandated purge list. What occurred in Miami-Dade County provides a vivid example of the use of these purge lists. According to the supervisor of elections for Miami-Dade County, David S. Leahy, the state provides his office with a list of convicted felons who have not had their rights restored. [67] It is the responsibility of Mr. Leahy's office to verify such information and remove those individuals from the voter rolls "[i]f the supervisor *does not* determine that the information provided by the division is *incorrect* …."[68] In practice, this places the burden on the voter to prove that they are incorrectly placed on the "purge list." Mr. Leahy's office sends a notice to the individuals requiring them to inform the office if they were improperly placed on the list.[69]

Table 1-4: Convicted Felons List, Miami-Dade County, 1999 and 2000

	June 1999		January 2000		Combined Totals	
	Number	Percent	Number	Percent	Number	Percent
Names on List	5,762	100%	1,388	100%	7,150	100%
Appealed & removed	327	5.7%	142	10.2%	469	6.6%
Names on list in error	485	8.4%	N/A	N/A	485	6.8%
Total names removed	812	14.1%	N/A	N/A	954	13.3%
White	1,013	17.6%	251	18.1%	1,264	17.7%
Black	3,794	65.8%	884	63.7%	4,678	65.4%
Hispanic	955	16.6%	253	18.2%	1,208	16.9%
Total	5,762	100%	1,388	100%	7,150	100%
Successful Appeals						
White	98	30.0%	27	19.0%	125	26.7%
Black	155	47.4%	84	59.2%	239	51%
Hispanic	74	22.6%	31	21.8%	105	22.4%
Total	327	100%	142	100%	469	100%

In addition to the possibility of persons being placed on the list in error, the use of such lists has a disparate impact on African Americans. African Americans in Florida were more likely to find their names on the list than persons of other races. African Americans represented the majority of persons—over 65 percent—on both the June 1999 and the January 2000 list (see table 1-4). This percentage far exceeds the African American population of Miami-Dade County. African Americans residing in Miami-Dade County account for only 20.4 percent of the population. Comparatively, 77.6 percent of the persons residing in Miami-Dade County are white; yet whites accounted for only 17.6 percent of the persons on the June 1999 convicted felons list. Hispanics[70] account for only 16.6 percent of the persons on that list, yet comprise 57.4 percent of the population. The proportions of African Americans, whites, and Hispanics on the January 2000 list were similar to the June 1999 list.[71]

This discrepancy between the population and the percentage of persons of color affected by the list indicates that the use of such lists—and the fact that the individuals bear the burden of having their names removed from the list—has a disproportionate impact on African Americans.

Indeed, the persons who successfully appealed to have their names removed from the list provided to Miami-Dade County by the Florida Division of Elections are also disproportionately African American. One hundred fifty-five African Americans (47.4 percent of the total) successfully appealed in response to the June 1999 list, and 84 African Americans (59.2 percent of the total) successfully appealed in response to the January 2000 list. Hispanics accounted for approximately 22 percent of those who appealed in response to both lists. White Americans accounted for 30 percent of those who appealed in 1999, and 26.7 percent of those who appealed in 2000. (See table 1-4). Based on the experience in Miami-Dade County, the most populous county in the state, it appears as if African Americans are more likely than whites and Hispanics to be incorrectly placed on the convicted felons list.

CONCLUSION

The Voting Rights Act prohibits both intentional discrimination and "results" discrimination. It is within the jurisdictional province of the Justice Department to pursue and a court of competent jurisdiction to decide whether the facts prove or disprove illegal discrimination under either standard. The U.S. Commission on Civil Rights does not adjudicate violations of the law. It does not hold trials or determine anyone's civil or criminal liability. It is clearly within the mandate of the Commission, however, to find facts that may be used subsequently as a basis for legislative

or executive action designed to protect the voting rights of all eligible persons.

Accordingly, the Commission is duty bound to report, without equivocation, that the analysis presented here supports a disturbing impression that Florida's reliance on a flawed voter exclusion list, combined with the state law placing the burden of removal from the list on the voter, had the result of denying African Americans the right to vote. This analysis also shows that the chance of being placed on this list in error is greater if the voter is African American. Similarly, the analysis shows a direct correlation between race and having one's vote discounted as a spoiled ballot. In other words, an African American's chance of having his or her vote rejected as spoiled ballot was significantly greater than a white voters'.

[1] Burdick v. Takushi, 504 U.S. 428, 441 (1992) (quoting Wesberry v. Sanders, 376 U.S. 1, 17 (1964)).

[2] Robert A. Butterworth, attorney general, state of Florida, Testimony, Tallahassee Verified Transcript, Jan 12, 2001, pp. 193-194. *See also* Complaints of Voting Irregularities Occurring During the November 7, 2000 Election, Bates Nos. 8204-8257.

[3] Copies of these complaints were provided to the Commission pursuant to subpoenas *duces tecum* served on the headquarters of each political party in Florida. *See* Complaints of Voting Irregularities Occurring During the November 7, 2000 Election, Bates Nos. 1-612.

[4] John Ellis Bush, governor of the state of Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 98-99, 105-109. The Governor's Select Task Force on Election Standards and Technology, Bates Nos. 1482-1485. *See also* Exec. Order No. 00-349, December 14, 2000 <http://www.collinscenter.org> (accessed Mar. 26, 2001).

[5] John Ellis Bush Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 105-109. The Governor's Select Task Force on Election Standards and Technology, Bates Nos. 1482-2155. On March 1, 2001, the Select Task Force released its findings and recommendations in a report titled, "Revitalizing Democracy in Florida.". The report focused largely on reforming and updating Florida's election technology. <http://www.collinscenter.org> (accessed Mar. 26, 2001).

[6] Jackson Chin, Associate Counsel, Puerto Rican Legal Defense and Education Fund, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 198.

[7] D.P. Misra, Former president, Association of Indians in America, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 443; Venghan Winnie Tang, president, South Florida Chapter of the Organization of Chinese Americans, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 446-451.

[8] Bradford Brown, first vice president, Miami Dade Branch, NAACP, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 437. *See* NAACP et al. v. Katherine Harris et al., No. 01-CIV-120-GOLD, (Fla. Dist. Ct., filed Jan. 2001).

[9] JoNel Newman, Florida Justice Institute, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 128-129.

[10] JoNel Newman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 129-130.

[11] One of the legal issues the enactment of the Voting Rights Act of 1965 addressed was the restrictive reading of constitutionally protected voting rights in a 1959 United States Supreme Court decision. *See* Lassiter v. Northampton County Bd. of Election, 360 U.S. 45 (1959). In *Lassiter,* the Supreme Court upheld the use of English literacy tests in North Carolina, as a means of qualifying voters, despite the fact that literacy tests effectively disenfranchised a sizeable portion of African American voters. In haunting language, the Court held that absent invidious discrimination the states could limit the franchise to literate persons "to promote intelligent use of the ballot." *Id.* at 51.

[12] Although the Voting Rights Act of 1965 was intended to enfranchise African Americans, the statute has been amended several times since its enactment. In 1975, Congress amended § 2 to specifically include within the scope of the statute language, other ethnic minorities in addition to African Americans. The statute is now also applicable to American Indians, Asian Americans, Alaskan Natives, and people of Spanish heritage. 42 U.S.C. § 1973(b)(f)(2).

[13] Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1982)). The 1965 Voting Rights Act also included a provision that recognized the need for multilingual assistance for non-English speakers. It barred language discrimination at the polls for literate Spanish-speaking Puerto Rican voters who emigrate to the mainland. 42 U.S.C. § 1973b(e) (1982).

[14] Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1994)).

[15] Although the focus of this chapter is section 2 of the VRA, section 5 is important to mention. Once there is a determination that a state or political subdivision has violated the VRA, the state or political subdivision is required, under section 5 of the VRA, to obtain preclearance whenever that entity enacts or seeks to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. 42 U.S.C. § 1973c (1994).

[16] *See* Whitcomb v. Chavis, 403 U.S. 124, 149-50 (1971); White v. Regester, 412 U.S. 755, 765-66 (1973).

[17] Mobile v. Bolden, 446 U.S. 55, 66-67 (1980).

[18] 42 U.S.C. § 1973(a) (1982).

[19] 42 U.S.C. § 1973(b) (1982).

[20] 127 Cong. Rec. 23,175 (1981) (statement of Representative Sensenbrenner).

[21] 127 Cong. Rec. 23,176-77 (1981) (statement of Representative Edwards). Representative Edwards called the Supreme Court's decision a "radical ruling … [with] an impossible burden to prove intent to discriminate, even where the system discriminates."

[22] The Senate Report delineated seven factors for courts to use to determine whether there is *dilution* in voting rights discrimination claims. The Report, however, did not define how courts should, in fact, weigh these factors. The factors are:

> 1. the extent of any history official discrimination in the state or political subdivision that touched the right of members of the minority group to register, vote, or otherwise participate in the democratic process;
>
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals; and,

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

S. REPRESENTATIVE No. 97-417, at 206-07 (1982), *reprinted in* 1982 U.S.C.C.A.N. 375-76.

The Report added that "[a]dditional factors that courts may consider include "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group" and "whether the policy underlying the state or political subdivision's use of such voting qualifications, prerequisite to voting, standard, practice or procedure is tenuous." *Id* . at 207.

[23] A plaintiff alleging a violation under the act need only prove that a practice or procedure has a discriminatory effect and was no longer required to prove that the practice was motivated by discrimination.

[24] S. REPRESENTATIVE No. 97-417, at 206-07 (1982), *reprinted in* 1982 U.S.C.C.A.N. 375-76.

[25] Thornburg v. Gingles, 478 U.S. 30, 47 (1986).

[26] S. REPRESENTATIVE No. 97-417, at 27 (1982), *reprinted in* 1982 U.S.C.C.A.N. at 204.

[27] S. REPRESENTATIVE No. 97-417, at 29 (1982), *reprinted in* 1982 U.S.C.C.A.N. at 206.

[28] Allan Lichtman, professor of history and chairman of the Department of History at American University, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 190. In Alabama Department of Public Safety v. Sandoval, No. 99-1908, 532 U.S.____, (Apr. 24, 2001) the Supreme Court recently held that a private citizen has no right to enforce the disparate impact regulations promulgated by the United States Department of Justice under Title VI of the Civil Rights Act of 1964. *Id.* (Slip Opinion at 16-17). While the news media has correctly reported this as a decision limiting individuals' ability to sue "over policies that allegedly have a discriminatory effect on members of a minority group…." (*The Washington Post* , Apr. 25, 2001 pp. A1, A21), this decision in no manner impacts a person's ability to use an effects test under the VRA. The VRA in unequivocal language authorizes the use of the effects test.

[29] Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 189-190 (emphasis added).

[30] Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 192.

[31] Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 192.

[32] Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 192.

[33] Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 193. Professor Lichtman said, moreover, that a finding of a violation of the Voting Rights Act would not be vitiated merely by a substantial participation of African Americans in a given election: "…if there is a higher hurdle for minority ballots to be counted than for white ballots to be counted, that operates independently of levels of turnout and the violation of the Voting Rights Act would still be present." Ibid. at 196.

[34] Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 193-194.

[35] Allan Lichtman Testimony, Tallahassee Verified Transcript, p. 194.

[36] Darryl Paulson, professor of government at the University of South Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 185. *See also* testimony by Ion Sancho, who discussed discriminatory intent versus effect:

I don't think there was any conscious targeting or racial discrimination on the part of supervisors. I think some of the effects of not having the kinds of monies necessary to do ongoing voter education programs has the effect of in fact impacting on minorities and young people and senior citizens because this was an election that brought out voters that voted maybe only one time in the last 10 years.

Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 52.

[37] Darryl Paulson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 187. After hearing the testimony of Professors Lichtman and Paulson, the Commission on Civil Rights was heartened to read the statement in the March 1, 2001, report issued by Governor Bush's Select Task Force on voting reform that "the substantial difference in error or reliability rates for different kinds of voting systems argues strongly for installing a uniform, standardized voting system for use by all voters in the [Florida] statewide 2002 election cycle." The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 37.

[38] The term "purge lists" refers to the lists of names of people to be removed from voter rolls, as provided by the Division of Elections. While some object to the use of the term "purge," that is in fact what occurs. A person's name is removed from the active list and placed on the inactive list. They are purged from the list of active voters. *See* Chapter Five for a detailed discussion.

[39] These were calculated using SPSS for Windows, version 10.0. Population data (for total population, median income, percent living in poverty, and percent white, African American, Hispanic, and minority) are Census Bureau estimates for 1999. Data from the 2000 census is not yet available on the county-level for the state of Florida. Estimates are expected to be published in Spring 2001. The data used for this analysis is set forth in Appendix I to this report.

[40] An overvote occurs when the voter selects more than one candidate. Under votes include those votes in which the voter purposely did not select a candidate as well as votes that were not registered by the machine.

[41] *Revitalizing Democracy in Florida* , The Governor's Selection Task Force on Election Procedures, Standards, and Technology.

[42] The Division of Elections, pursuant to a subpoena, provided this information. Florida State Department of Elections "Registered Electors by Party: County Totals" Oct. 10, 2000, Bates Nos. 16764-16872.

[43] Spoiled ballots include both overvotes and undervotes for president.

[44] The correlation coefficient is .587 and is significant at the .01 level. The closer the correlation coefficient is to 1 or -1, the stronger the relationship between the two variables; the higher the coefficient, the more likely it is that the relationship between the two variables does not occur by chance. Correlation coefficients between 0.4 and 0.7 suggest a medium to strong relationship between the variables. Correlations above 0.7 are considered highly correlated. Conventionally, social scientists accept as statistically significant results of either a 0.5 level of confidence which means there is a 5 in 100 probability of the results being observed occurring by chance, or the more stringent 0.1 level of confidence which means there is a 1 in 100 probability of the results being observed occurring by chance. Stated alternatively, a significance level of .01 can be interpreted as

meaning that there is a 99 percent confidence level that the relationship observed did not occur by chance. *See* , for example, Richard A. Zeller and Edward G. Carmines, *Statistical Analysis of Social Data* (Chicago: Rand McNally, 1978), p. 202.

[45] The correlation coefficient is .526 and is significant at the .01 level.

[46] The correlation coefficient is -.574 and is significant at the .01 level.

[47] Correlations are used to determine interdependence among variables, but cannot indicate causality. For a discussion of the use of statistics as evidence in discrimination cases, *see* Ramona Paetzold and Steven L. Willborn, *The Statistics of Discrimination: Using Statistical Evidence in Discrimination Cases* (Colorado Springs: Shephard's/McGraw-Hill, Inc., 1994), § 6.02. Regression analysis may be used to further explore the relationship between variables.

[48] *See* Appendix I.

[49] Leon County, home to the state-capital has the state of the art election system. Ion Sancho Testimony, Miami Verified Transcript, p. 48.

[50] Dr. Lichtman is a professor of history and chair of the History Department at American University in Washington, D.C. His areas of expertise include political history, voting analysis, and historical and quantitative methodology. He is the author of numerous scholarly works on quantitative methodology in social science. He has coauthored with Dr. Laura Langbein, *Ecological Inference* , a standard text on the subject of inferring the behavior of population groups from data collected for political units. His scholarship also includes the use of quantitative and qualitative techniques to perform political and historical studies of voting. He has published articles on the application of social science analysis to the Voting Rights Act.

He has worked as a consultant or expert witness for both plaintiffs and defendants in more than sixty federal voting rights cases. This experience includes several cases in the state of Florida. He has been recognized as an expert witness in voting rights, political history, political systems, statistical methodology, quantitative analysis of voting, and socioeconomic analysis, among other matters, in more than fifty federal court cases in which he has presented oral or written testimony. A copy of his complete curriculum vitae is included in the expert report prepared by Dr. Alan Lichtman titled "Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida," (hereafter cited as Lichtman Report).

[51] For counties that separately record undervotes and overvotes, the total number of unrecorded votes is slightly higher than the sum of undervotes and overvotes.

[52] This discussion of refined statistical analysis of voter dilution is a summary of the detailed statistical analyses performed by Dr. Lichtman and is in large part taken from the Lichtman Report.

[53] The county-level correlation between the percentage of African American registrants for 1998 and 2000 is a near-perfect .996.

[54] Additional data on undervotes and overvotes, was obtained from the data tables in Siegel v. LePore, 234 F.3d 1163 (11th Cir. 2000) and from CNN and Associated Press, <http://www.cnn.com/ELECTION/2000/resources/ballot1.htm>. Precinct level data for Duval County, Miami-Dade, and Palm Beach County data was obtained from the website of Bruce E. Hansen, Stockwell professor of economics, University of Wisconsin-Madison: <http://www.ssc.wisc.edu/~bhansen/vote/data.html>. Socio-economic data was obtained from the 1990 Census (such data is not yet available for 2000. Estimates of literacy rates were obtained from CASAS, "Synthetic Estimates Of Literacy, Percent Level 1, National Adult Literacy Survey."

[55] Regression analysis measures the influence of one or more variables, known as independent variables, on another variables known as the dependent variable. When used for political units such as the counties of Florida or the precinct within a county, regression analysis measures the extent to which the value of the dependent variable changes from one unit to another in response to changes in the value of the dependent variable. For a brief description of regression analysis see: Hubert M. Blalock, *Social Statistics* (New York: McGraw Hill, 1979), pp. 382-386.

[56] Ecological regression is a standard method for inferring the behavior of population groups from data collected for aggregate units such as counties or precincts. It produces such estimates by comparing the racial composition of the various voting precincts to the division of the vote among competing candidates in each precinct. The ecological regression procedure for analyzing the behavior of population groups is set forth in Dr. Lichtman's book, *Ecological Inference* (Sage Series on Quantitative Applications in Social Science, 1978: with Laura Irwin Langbein. Other references on the use of ecological regression for voting analysis include: Richard Engstrom, "Quantitative Evidence in Vote Dilution Litigation: Political Participation and Polarized Voting," *Urban Lawyer* (1985); Bernard Grofman and Chandler Davidson, eds., *Controversies in Minority Voting: The Voting Rights Act in Perspective* (Cambridge: Cambridge University Press, 1992); Bernard Grofman, Lisa Handley, and Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge: Cambridge University Press, 1992); Allan J. Lichtman, "Passing the Test: Ecological Regression in the Garza Case and Beyond," *Evaluation Review* (1991).

[57] Non-blacks include non-Hispanic whites as well as Hispanics and members of other races. Because of limitations in the data available, no attempt was made to distinguish the components of the non-African American group, although racial disparities might be even greater if African Americans and non-Hispanic whites were isolated for analysis.

[58] 478 U.S. 30 (1986).

[59] Extreme case analysis is designed to isolate nearly homogeneous groups of African Americans and non-African Americans by examining precincts within each county studied that are either 90 percent or more African American or 90 percent or more non-African American in their voter registration. The analysis simply reports the actual ballot rejection rates in these precincts that are comprised overwhelmingly of African American or non-African American registrants. Extreme case analysis provides a very useful check on the results of ecological regression analysis. It provides a comparison of actual rejection rates in nearly homogeneous African American and non-African American precincts with estimated rejection rates for African Americans and non-African Americans in all precincts derived from ecological regression analysis. For descriptions of extreme case analysis and its relation to ecological regression analysis see: Lichtman, "Passing the Test," and Grofman, et. al, *Minority Representation* , pp. 85-90.

[60] As noted above, not every rejected ballot in Florida was separately classified as either an undervote or an overvote.

[61] The analysis first used ecological regression to estimate the turnout rates of African Americans and non-African Americans (which were approximately equal) and then applied those rates to estimate the percentage of African Americans among voters. The number of registrants or of ballots cast weights all correlation and regression analyses. Statistical significance results, however, are based on the number of counties included in each analysis.

[62] These correlations are consistent with those found by the Commission in its own preliminary analysis of rejected ballots see the preceding discussion in this chapter.

[63] An analysis of the voting systems used in the 2000 Florida presidential election showed that counties using punch card systems and optical scanning systems with central tabulation had much higher rates of ballot spoilage than those using optical scan precinct count systems. *See* detailed discussion in Chapter 8 of this report.

[64] As for the state overall, within this group of counties that account for most rejected ballots, a multiple regression analysis that controlled for the percentage of high school graduates and the percentage of adults in the lowest literacy category failed to diminish the relationship between race and ballot rejection or to reduce the statistical significance of the relationship.

[65] Duval County is 24 percent African American, Dade County is 20 percent African American, and Palm Beach County is 9 percent African American based on 1998 voter registration information. All three used punch card technology.

[66] Databases for the three individual counties and for the county-level analysis are appended to this report.

[67] David Leahy, supervisor of elections, Miami-Dade County Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 315-316.

[68] Fla. Stat. ch. 98.0975(4) (2000) (emphasis added).

[69] David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 315-316.

[70] Hispanics may be of any race.

[71] *See* Appendix I

Chapter Two

First-Hand Accounts of Voter Disenfranchisement

Although the statistical data concerning spoilage rates and the use of the felony purge list present vivid depictions of the effect of these election system failures, perhaps the most compelling evidence of election irregularities the Commission received were the first-hand accounts by citizens who experienced problems voting. The following chapter presents individual accounts of voting system controls and failures.

VOTERS' NAMES NOT ON ROLL WITH NO OPPORTUNITY TO APPEAL

On November 7, 2000, millions of Florida voters arrived at their designated polling places expecting to cast their votes. Unfortunately, countless numbers of those voters were denied any opportunity to vote because their names did not appear on the lists of registered voters.[1] When poll workers attempted to call the election supervisors' offices to verify voters' registration status, they were often met with incessant busy signals or no answer.[2] In accordance with their training, most poll workers refused to permit persons to vote whose name did not appear on the roll at their precinct. Thus, numerous Floridians were turned away from the polls on Election Day without being allowed to vote and with no opportunity to appeal the poll worker's refusal. The following are a few examples of experiences that Floridians had who were turned away from their polling places.

Citizens Who Were Not Permitted to Vote

Cathy Jackson, an African American woman, had been a registered voter in Broward County since 1996. Upon registering in Broward County, Ms. Jackson was told that if she ever experienced a problem with her voter registration card, she would be allowed to vote if she could produce a valid driver's license. Ms. Jackson voted in Broward without any incident using her driver's license since 1996. However, when she went to her polling place, Precinct 52Z, on November 7, 2000, she was told that her name was not on the list. The poll workers suggested that she travel back to her old precinct in Dade County to vote. Ms. Jackson did as she was advised even though she had voted in Broward County since she moved from Miami-Dade County in 1996. After waiting 45 minutes at her old precinct, the poll workers in Dade told Ms. Jackson that her name was not on the roll and referred her back to Broward to vote. [3]

When Ms. Jackson returned to the Broward precinct, the poll workers advised her to wait while they checked her registration status. While she waited, Ms. Jackson observed a poll worker from another percent within the same polling place allow an elderly white voter, whose name did not appear on the roll, to fill out an affidavit and vote. When Ms. Jackson asked if she could do the same, the poll workers explained that she could fill out an affidavit, but that she could not vote until they had verified her registration. The phone lines to the election supervisor's office, however, remained busy for several hours. Ms. Jackson became upset, and eventually she left in order to go to work. Undeterred by these delays, Ms. Jackson returned to her precinct after work to try to vote again, but the poll workers were never able to verify her registration status and refused to allow her to vote.[4]

Donnise DeSouza, an African American voter, has been registered to vote since 1982 in Dade County. When she entered the Richmond Fire Station in Dade County at 6:50 p.m. and showed her identification to the poll worker, Ms. DeSouza was told that her name was not on the roll. The poll worker directed her to the "problem line," so that her registration status could be verified with the election supervisor's office. Ms. DeSouza recalled that the line of about 15 people did not move, but at 7:00 p.m. when the poll began to close, a poll worker announced to the group "if our name was not on the roll that she could not let us vote and that there was nothing she could do." The poll workers stopped their attempts to verify the registration status of the voters who had been standing in line. When Ms. DeSouza asked if there was an absentee ballot that would allow her to cast her vote, the poll worker explained that there was nothing they could do.[5]

Ms. DeSouza testified to the Commission that she was "very agitated" and the next day began to register complaints with various sources about her experience. Upon further investigation with the office of the supervisor of elections, she discovered that the poll workers should have continued their efforts to resolve the problems of those voters who were in the precinct prior to closing. Furthermore, Ms. DeSouza learned that her name was actually on the roll of registered voters because subsequently a worker at the elections office showed her the sheet that contained her name where she should have been allowed to sign. But Ms. DeSouza explained, "at that point [the election was over so] there was nothing they could do and I was deprived of my right to vote."[6]

Angenora Ramsey, an African American, former poll worker with 18 years' experience, had changed her address prior to November 7. Based on her familiarity with election procedures, when Ms. Ramsey went to vote at Precinct 62 in Palm Beach County, she completed a change of address affidavit. But when the poll worker tried to call the office of the supervisor of elections to verify Ms. Ramsey's registration status, she was unable

to get through. According to Ms. Ramsey, the phone lines remained busy for three and one-half hours—a delay she had never experienced during her time as a poll worker. Ultimately, the poll workers refused to allow her to vote because they could not verify her voter status.[7]

Margarita Green, a 75-year-old Cuban American woman, went to vote at the same precinct in Dade County where she had always voted since becoming a citizen in 1966. When Mrs. Green showed her registration card to the poll worker, she was told that her name was not on the roll and that she must speak with another poll worker who would look into the problem. Mrs. Green recalled that it took a long time for the poll worker to reach the supervisor of elections because the phone line was busy. When she finally got through, the worker explained that according to their records, Mrs. Green had called in 1998 and "erased" herself from the voter's list. Although Mrs. Green insisted that she had not called and showed the poll worker her registration card, the poll worker refused to allow her to vote.[8]

Johnnie Ballard, an African American resident of Dade County, registered to vote six weeks prior to Election Day, but he never received his registration card. He tried to call the office of the supervisor of elections to verify his registration status, but the line was constantly busy. When Mr. Ballard went to his assigned precinct on Election Day and explained that he had never received his registration card, the poll workers called the election supervisor's office, but they were unable to confirm his status and did not allow him to vote. On December 1, Mr. Ballard received an undated letter explaining that his registration application was missing information, but the letter failed to explain what information had been missing.[9]

R. Jai Howard, vice president of the Florida Agricultural and Mechanical University Student Government Association, testified on behalf of more than 12,000 predominantly African American students attending college in Leon County, Tallahassee. She described the massive voter registration efforts that took place at the school in the months preceding the November 2000 election. The association's efforts continued until October 10, 2000, the last day to register before the election and included a rally in which Reverend Jesse Jackson and Ion Sancho, the Leon County supervisor of elections, participated. Despite its efforts, the Student Government Association learned in the days following the election that large numbers of students had problems voting, "including one student who had two voter registration cards with two different precincts, some students who received no voter registration cards, switching of precincts without prior notification, missed information at precincts, and students who had attempted to register numerous times and never received registration [cards] and were never entered into the system."[10] As a result of these combined problems, many `students who believed that they had been properly registered were not allowed to vote.

Poll Workers Confirm Widespread Voter Disenfranchisement

The experiences of these Floridians who were denied their opportunity to vote were corroborated by the observations of poll workers who also testified at the Commission hearing in Miami. Many poll workers attempted to follow the procedures that they had been taught in their training, such as verifying voter registration with the supervisor of elections, but their efforts were largely futile because of the inadequacies they faced throughout the voting system.

Marilyn Nelson, a poll worker with 15 years of experience in Miami-Dade County, testified "by far this was the worst election I have ever experienced. After that election I decided I didn't want to work as a clerk anymore."[11] At the North Dade Elementary School, Precinct 232, she observed several voters who had presented their voter registration cards showing that they were properly registered, but the poll workers could not allow them to vote because their names did not appear on the rolls. Ms. Nelson also saw voters with their "orange cards," which meant that the voter had registered on time and should be allowed to vote, provided that the poll worker could verify the voter's registration status with the election supervisor's office. Many of these voters, however, were not permitted to vote because the poll workers could not get through on the phone line to the supervisor's office.[12]

Maria DeSoto, a poll worker in Palm Beach County, testified that she had used on her personal cellular phone attempting to contact the election supervisor's office all day, but was only able to get through two or three times over the course of 12 hours.[13] Ms. DeSoto added that if voters' names did not appear on the roll, they were not allowed to vote, even if they presented valid identification.

Barbara Phoele, a poll worker in Broward County at Precinct 6C, observed mostly African American and Hispanic voters being turned away because their names did not appear on the roll. The precinct clerk at her site was not able to get through to the central election office to give affidavits to those voters whose names did not appear. According to Ms. Phoele, the clerk did not communicate with the voters and did nothing to encourage them to vote. In fact, Ms. Phoele noticed later that afternoon that the sign informing voters where they should call if they experienced problems had never been posted. She brought this to the attention of the precinct clerk, who explained, "I didn't have time to put it up."[14] Ms. Phoele recalled that in past elections, only about ten minutes were required to reach the elections supervisor, but on November 7, 2000, she turned away approximately 40 or 50 people because she could not access the supervisor of elections.[15]

Marvin Rickles, Jr., a deputy at Precinct 74B in Palm Beach County, observed an African American school principal who was turned away after waiting for two hours because her name did not appear on the roll and the poll workers could not reach the election supervisor's office.[16] She returned to the precinct later that afternoon and was allowed to vote only after she discovered that her name had been misspelled on the roll.

Millard Suid, a poll worker at the Water Works Department in Boynton Beach, testified that he was not able to get through to the office of the supervisor of elections. He recalled helping only one voter over the course of about eight hours. Mr. Suid stated that the precinct deputy estimated that they "[m]ust have turned away maybe 30 or 50 people that could not vote."[17]

Randall Benston worked as an area chair overseeing three precincts, 6Z, 5Z, and 7B. Mr. Benston observed poll workers who were unaware that voters who are not on the rolls were allowed to fill out affidavits and vote.[18] He eventually persuaded the poll workers to allow voters to fill out affidavits in accordance with Florida election law.

The pervasive problems that prevented many Florida voters from being able to vote on November 7 could have been alleviated with proper poll worker training, greater resources, and an ability to communicate with the supervisors of elections. In the absence of these provisions, however, countless eligible voters in Florida were disenfranchised and never allowed to exercise their right to vote.

POLLING PLACES CLOSED EARLY OR MOVED WITHOUT NOTICE

Many Floridians experienced extreme frustration on November 7 when they reported to the precincts where they had been voting regularly, in some cases for many years, and discovered that their precincts were no longer being used or had moved to another location, without notice from the elections supervisor's office.[19] In other instances, some voters who had been standing in line to vote at their precincts prior to 7:00 p.m. were told that they could not vote because the poll was closed.[20] Under these circumstances, the patience of many Floridians was exhausted.

Polling Places Closed Early

When **Lavonna Lewis**, an African American, first-time voter, went to her polling place to vote, she was told by a white poll worker standing outside that the poll was closed. As she turned to leave, the poll worker allowed a white gentleman to walk in and get in line to vote.[21]

Donnise DeSouza arrived at her assigned precinct at 6:30 p.m., but she could not enter until 6:50 p.m., due to the long line of cars parked on the street waiting to gain access to the polling place. Once Ms. DeSouza was able to finally enter the polling place, she waited for another 10 minutes while poll workers verified her registration status. At 7:00 p.m., however, the poll workers announced to Ms. DeSouza and approximately fifteen other voters who were waiting to be helped, that they could not vote because the poll was closed.[22]

Susan and Joel Newman arrived at the Water Works Department in Palm Beach to vote at approximately 6:15 p.m.[23] Upon their arrival, they noticed

> [T]he iron gates at the entrance were closed, preventing entrance ... Several cars pulled into the entrance lane and tried to attract attention by honking horns and ringing an intercom. We waited 5–10 minutes but no one showed up and the gates remained locked. We drove off thinking we were wrong about the closing time—that the polls must have closed at 6:00. A few blocks away we spotted a police car and pulled up to check. He verified that the polls were open until 7:00. We complained about the situation we had just experienced and he told us to go to the Board of Elections (some 20 minutes away). We drove there and met a policeman as we entered the building. He listened to our complaint and politely told us there was nothing he could do. We would have to register our complaint with the director of Elections, Theresa LaPore. Unfortunately, he told us, her office had closed at 5:00 p.m., and her staff went home. We would have to complain the following day. We left, realizing that we would have no opportunity to vote this year.[24]

Millard Suid, a poll worker at the Water Works Department on John Road in Boynton Beach, confirmed the above poll closing. He explained that the gates to the property are on an automatic timer that shuts them every day at 6:15 p.m.[25] When the automatic timer shut the gates at 6:15 p.m. on Election Day, however, Mr. Suid stated, "it was a disaster. The people at the Water Works Department should have known about it or the people, Theresa LePore, who runs that particular district, should have known about that."[26] When asked if he called the supervisor of elections to report the fact that the gates had closed, Mr. Suid testified, "That wouldn't do any good, couldn't get in. I had called 911 and told the police. Now there was a young lady at the Water Works Department who worked there all day and she left at like 5:30 and she said, 'I'll be back at 7:30 to lock up.' Now she should have known this gate's going to lock automatically.... That wasn't the first time they used that. So somebody screwed up."[27]

Robert Weisman, the county administrator for Palm Beach County stated in a response to an interrogatory issued by the Commission after the February 16, 2001 hearing, that he did not know about the gate-closing incident until the Commission hearing.[28] He further acknowledged that a subsequent investigation by representatives of the supervisors of elections office determined that the gate indeed had closed. Mr. Weisman did not dispute that the automatic locking of the gate blocked access to the Palm Beach County polling place before the official closing. Frustrated voters like Susan and Joel Newman, who went to the polls prior to poll closing time, but were prevented from voting, confirmed this fact.

Polling Places Moved Without Notice

If a supervisor of elections determines that a polling place must be moved, the supervisor must "not more than 30 days or fewer than 7 days prior to the holding of an election, give notice of the change."[29] Such notice is to be published in a newspaper of general circulation within the county and notices must be mailed to each registered voter at least 14 days prior to the election.[30] In case of an emergency, the supervisor of elections must post a notice at the old polling place advising voters of the new location.[31] Regardless of the circumstance for the change, the new polling place must be accessible to all voters and conspicuously identified by a sign. On November 7, 2000, however, these requirements of Florida election law were not strictly followed.[32]

Felix Boyle, a registered voter in Dade County, went to Precinct 36, the same polling place where he had voted in the primary election in September 2000. He discovered that his polling place had moved to an adjacent building without prior notice. Mr. Boyle described the new building as a "medieval labyrinth. [There were] sulfuric odors from standing water, orange cones, barriers, deep pits, broken concrete. It was a real problem getting there."[33] And although Mr. Boyle's polling place during the primary was very busy, the new location was "deserted" on November 7, 2000. He surmised that the appearance of the site may have resulted in fewer people voting there on Election Day.[34]

Margarita Green testified that her husband, who was present with her at the poll in Dade County, was told that his precinct had been moved.[35] He had not received any prior notice that his polling place was going to be changed.

These logistic problems made it especially difficult for far too many voters to exercise their right to vote. In light of the expected high turnout during the 2000 presidential election, which was eventually realized, officials should have made concerted efforts to follow the mandates of Florida's election laws.

NATIONAL VOTER REGISTRATION ACT: THE MOTOR VOTER LAW

In 1993, Congress enacted the National Voter Registration Act (NVRA)[36] in an effort to increase citizen participation in federal elections.[37] Congress gave states three years to implement its provisions. To implement the NVRA, Florida enacted the Florida Voter Registration Act (FVRA)[38] to "provide the opportunity to register to vote or update a voter registration record to each individual who comes to an office of [The Department of Highway Safety and Motor Vehicles]" [39] to apply for or renew a driver's license, apply for a new identification card, or change an address on an existing driver's license or identification card.[40] Since the FVRA was enacted, more than 3,500,000 voter registration applications have been filed.[41] There were 609,389 applications filed with the Department of Highway in the calendar year 2000.[42]

The Department of Highway Safety and Motor Vehicles does not, in fact, register voters; rather, it provides a method for persons to apply to the county supervisors of elections to register while conducting license or identification card transactions. This process is commonly referred to as the "motor voter" process.

In 1995, training for the motor voter process began and was conducted by the Division of Elections. Sandra Lambert, the director of the Division of Driver Licenses, described the motor voter process at the Commission's Miami hearing:

> When a customer comes into a Driver License Office to have any kind of driver license or identification card transaction, all basic information is initially processed. The customer is then asked if they would like to apply to register to vote. If that customer answers in the affirmative all the basic information is transferred from the computer screen on to an additional motor voter screen, so no additional information at that point has to be asked in duplication.
>
> Some additional information does have to be gathered, such as party affiliation, homestead exemption address, [and] a few additional things by law. Once that is completed the application is printed, it is given to the customer to verify for accuracy, the oath is administered and the application is signed. If a person declines to apply to register to vote or to change their address, it is so noted on our computer files.
>
> If a person is not in the office, but rather making a transaction by mail, having their renewal done by mail, there is information in that envelope which they receive and an application so that they can make any kind of changes to their voter registration or to make application to vote at that time. All of that information is mailed directly to the local supervisor of elections. And there is a list with all the addresses enclosed in their renewal information.
>
> At the end of each day, in one of our offices, an end of the date motor voter report is compiled, along with all of the applications, and then all of that information is forwarded within five days to the local supervisor of elections. It's pretty much of an electronic process up until this point, and then forwarded on to the local supervisor of elections.[43]

Despite this effort to increase citizen participation through motor voter registration, problems exist in the implementation of the registration process. Curtis Gans, director of the Committee for the Study of the American Electorate, testified "[i]n this election, thousands of people, not only in Florida, but in other places, who registered at motor voter places, motor vehicle license bureaus and in social service agencies were not on the rolls when they came to vote."[44] A poll worker who testified at the Commission's Miami hearing corroborated this observation:

> [T]here were people who had registered to vote through motor voter and somehow their registration was not transmitted to the supervisor of elections office. I saw that with married couples in my own precinct. One person would be registered to vote, the other person would not. The person who was not registered to vote couldn't vote unless they physically went to the supervisor of elections office and picked up a piece of paper, which they then brought back to me, because we couldn't reach them on the telephone.[45]

Congresswoman Corrine Brown also noted the failure of proper processing of motor voter registration, stating "thousands of people went and got their driver's license, but to this date they did not … receive their voter card."[46]

Despite these allegations, according to Ms. Lambert, the fault should not be assigned to the motor voter registration system set up by Florida. Ms. Lambert testified that although she did "receive a number of complaints after the November election," she investigated all complaints and "found a variety of reasons why the person was not on the list."[47] Ms. Lambert asserted that all complaints were resolved and there was no failure on the part of the Department of Motor Vehicles. [48] In several cases, Ms. Lambert noted, "people said they registered to vote at the motor vehicle office when in fact they had renewed by mail and they had received the application in the mail."[49] In this instance, the individual is responsible for mailing the form to the applicable supervisor of elections office. In another instance, a voter did, in fact, visit a drivers license office; he registered, however, after the closing date and was thus not eligible to vote in the November election.

Finally, according to Ms. Lambert, there were several instances when the mail was never received by the supervisor of elections. In this instance, a supervisor of elections would call to notify her office of a complaint. Ms. Lambert said her office then "would check and discover that we mailed …

a batch that day."[50] If the supervisor of elections office had not received that registration, Ms. Lambert said her office "then recreate[d] that day's report for the supervisor of election."[51] Ms. Lambert claimed, however, that it is the supervisor of elections "responsibility then to have to make contact with that customer, or all those people, to get them to be on the rolls."[52]

Many Floridians alleged that they registered to vote through the Department of Motor Vehicles (DMV) and learned later that they were not registered. Many of these disappointed citizens filed complaints with the attorney general's office and/or the Democratic Party. The following are some examples of individuals who used the motor voter provisions to register, but were denied the right to vote.

Marcia and **George Seamans** of Boynton Beach registered to vote at the DMV on two separate occasions and were told at the polls that their names were not on the voter rolls. While at the DMV to obtain their driver's licenses, they were asked to register to vote. They were directed to fill out a separate registration application, and, upon its completion, were told that they were registered. When they went to the polling place, however, their names were not on the rolls. When the poll worker called the central office to verify their registration status, they learned that their names were not on the central voter file and they were not allowed to vote.[53]

In response to the Commission's interrogatory regarding the Seamans' registration, Sandra Lambert, director of the Division of Driver Licenses, stated that its record indeed confirmed that Mr. and Mrs. Seamans submitted its voter registration applications at the time of obtaining their driver's licenses.[54] The division's records also indicated that their voter registration applications and the transmittal reports were forwarded to the applicable supervisor of elections office.[55] Ms. Lambert, however, was not able to explain the actual status of their voter registration. She reiterated that all voter registration applications and transmittal reports are forwarded to the supervisor of elections office within five days of receipt.[56] With regard to the Seamans, Ms. Lambert explained that voter registration applications are forwarded to Palm Beach County by U.S. mail and that copies of the applications are not maintained in their field driver license offices due to confidentiality.[57] Based on this response, it is difficult to determine whether the voter registration applications were properly transmitted to the supervisor of elections office or whether that office misplaced the applications once they were received. The fact remains that Mr. and Mrs. Seamans properly registered to vote at their driver license office and were deprived of their right to vote on Election Day.

Bill Zannie of Palm Beach County registered to vote at the DMV when he went to obtain his Florida driver's license. He requested a confirmation to ensure that he was properly registered to vote. The DMV staff assured him that he was properly registered, and therefore, he did not obtain a confirmation. When he went to vote on the day of the election, he was told that his name was not on the voter rolls. He also learned that there was no record of his registration. Since he registered to vote at a governmental agency, he assumed that he was registered properly and to his disappointment, he was not registered.[58]

When asked about the voter registration status of Mr. Zannie, Ms. Lambert responded that according to the division's electronic transaction file for December 7, 1998, the date Mr. Zannie obtained his driver's license for the first time in Florida, the driver's license record indicated that he was currently registered to vote and, therefore, DMV staff did not forward any forms to the supervisor of elections.[59] According to Mr. Zannie, December 7, 1998 was the first time that he had obtained a driver's license in Florida and was the first time he requested to register to vote in the state of Florida. However, the Division of Driver Licenses' records indicated that he was already registered and, therefore, it took no action to register him to vote.[60] Interestingly, Ms. Lambert explained in an answer to the Commission's interrogatory that in the two times that Mr. Zannie moved in Florida and changed his address on his driver's license, his identification card/voter registration application indicated that he was currently registered to vote,[61] raising another serious issue. The fact that Mr. Zannie changed his address twice in Florida and the driver license center file seemed to be current indicates that his voter registration should have also reflected his change in address. However, the driver license center failed to forward these address change forms to the local supervisor of elections office despite Mr. Zannie's repeated requests.

Maria DeSoto, a poll worker from Palm Beach County testified that many eligible voters who registered through the DMV found that their registrations were not transmitted to the supervisor of elections office. She witnessed a couple who registered together at the DMV but only one person's name was on the voter rolls on the day of the elections.[62]

The testimony of the witnesses who experienced problems voting after they had applied with the Division of Driver Licenses seems to run counter to contentions made by Ms. Lambert that its motor voter registration process is "very simple" and "very good." Although the Division maintains that it should not be blamed for the numbers of citizens who were deprived of their right to vote on Election Day, those individuals who were actually disenfranchised may have reason to disagree.

ABSENTEE BALLOTS

There were various absentee ballot related complaints from Florida voters. The Commission heard testimony alleging that there was an effort by organized groups to encourage their constituents to vote absentee for the November election. In other instances, voters complained that they had requested absentee ballots, but never received them. Still other voters complained that when they went to the polling place, they were denied ballots because the election records indicated that they had been sent absentee ballots. And some voters complained that they received absentee ballots at home even though they had never requested them.

At the Tallahassee hearing, Peter Alvins, an attorney from Panama City, testified that Governor Bush sent out a letter encouraging selected citizens to vote by mail. Mr. Alvins claimed that this "vote by mail letter" offered selected citizens the opportunity to vote by mail, which is not allowed in Florida. He further pointed out that the letter had the seal of the state of Florida and it was signed by Governor Bush.[63]

Following Mr. Alvins' testimony and presentation of his supporting documents, Moya Burgess responded with outrage. She explained, "it makes me sick to think that my taxpayer money, our taxpayer money was used by our governor to basically send out an infomercial to his party."[64] She added that she is registered with "the other party" and she never received any information from the governor. In Ms. Burgess' opinion, this letter

should have been addressed to all voters.[65] This testimony is most telling of some of the reactions by those citizens in Florida who were not included in the governor's list of voters.

POLICE PRESENCE AT OR NEAR THE POLLING SITES

Several Florida voters reported seeing Florida Highway Patrol troopers in and around polling places, arguably in direct violation of Florida election law. Several troopers conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominantly African American neighborhood. In another area, trooper vehicles were reportedly parked within sight of at least two polling places, which one resident characterized as "unusual." In light of the high voter turnout that was expected during the 2000 presidential election, particularly among communities of color that may have experienced a strained relationship with law enforcement, some Floridians questioned the timing of and the motivation for the Florida Highway Patrol's actions.

The Florida Election Code provides:

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose.[66]

The state of Florida also restricts the presence of law enforcement officers at polling places. Specifically, unless he or she enters the polling place to cast a ballot, no law enforcement officer may enter a polling place without the permission of the clerk or a majority of the inspectors.[67] The clerk or inspectors are required to make an affidavit for the arrest of any law enforcement officer who does not comply with the law.[68] Sheriffs also have a duty under Florida election law to "exercise strict vigilance in the detection of any violations of the election laws and in apprehending the violators."[69]

Colonel Charles C. Hall, director of the Florida Highway Patrol (FHP), testified at the Commission's Tallahassee hearing. He explained that the history of increased checkpoints by the FHP began in the early 1980s, when the vehicle inspection laws were repealed. The FHP determined that the most effective way to inspect a large number of vehicles was through driver's license/faulty vehicle equipment checkpoints.[70] He also noted that he had no conversations with the office of the governor, the office of the attorney general, or the office of the secretary of state in preparation for the 2000 presidential election.

Colonel Hall admitted that on November 7, 2000, the FHP established a checkpoint on Oak Ridge Road in Southern Leon County, between the hours of 10:00 a.m. and 11:30 a.m.[71] The demographic makeup of the precincts surrounding the Oak Ridge Road checkpoint are as follows: (1) Precinct 107 is 82 percent Caucasian and 13 percent African American; (2) Precinct 109 is 37 percent Caucasian and 57 percent African American; and (3) Precinct 110 is 70 percent Caucasian and 24 percent African American.[72] Approximately 150 vehicles were stopped as a result of the Oak Ridge Road checkpoint that day. According to FHP records, of the 16 citizens who received notices of faulty equipment, six (37 percent) were people of color.[73]

On the afternoon of Election Day, the FHP received notice of a complaint to the attorney general's office that FHP troopers had hindered people of color from arriving at polling places due to the Oak Ridge Road checkpoint. Colonel Hall indicated that "the FHP was the first statewide law enforcement agency in the county to voluntarily begin collecting data concerning traffic stops in response to the racial profiling issue."[74] He did not volunteer to provide information concerning the racial breakdown of drivers stopped at that checkpoint on Election Day.

As a result of its investigation, the FHP found that some policy violations had occurred, but concluded that no citizen was unreasonably delayed or prohibited from voting as a result of the Oak Ridge Road checkpoint.[75] The policy violations cited by FHP's investigators included the fact that the checkpoint site was not on the monthly pre-approved list and the media notification policy was not followed.[76] The investigators recommended counseling for the sergeant in charge of the checkpoint and the district commander in charge of the media notification.

Colonel Hall stated that the FHP was "very concerned about the perception people may have about what the patrol did that day."[77] The Commission heard testimony from voters in Tallahassee regarding their reaction to the FHP's actions on Election Day. Roberta Tucker, an African American woman and a longtime resident of Tallahassee, was driving along Oak Ridge Road on her way to vote. Before Ms. Tucker could reach her polling place, she was stopped at an FHP vehicle checkpoint conducted by approximately five white troopers. According to Ms. Tucker, the checkpoint was located at the only main road leading to her assigned polling place. One of the troopers approached Ms. Tucker's car, asked for her driver's license, and after looking at it, returned it to her and allowed her to proceed. Ms. Tucker considered the trooper's actions to be "suspicious" because "nothing was checked, my lights, signals, or anything that [the state patrols] usually check."[78] She also recalled being "curious" about the checkpoint because she had never seen a checkpoint at this location. Ms. Tucker added that she felt "intimidated" because "it was an Election Day and it was a big election and there were only white officers there and like I said, they didn't ask me for anything else, so I was suspicious at that."[79]

In response to the allegations of voter intimidation surrounding this checkpoint, Colonel Hall stated that "the checkpoint was properly conducted, and it was not anywhere near a polling facility, and I don't see how that could affect anybody's ability to vote."[80] He added that he was "not really" surprised to learn that a trooper may have asked for a driver's license and not registration. He explained that such an action could occur if vehicles had begun to back up.[81] Moreover, Colonel Hall stated that he was "disappointed" that the FHP could not speak with Ms. Tucker because she refused to cooperate with their investigation.[82] Ms. Tucker testified, however, that she reported the incident to her local NAACP and never returned the FHP's calls because "I felt it was a civil rights issue . . . I felt like it was sort of discriminatory."[83]

When John Nelson, an African American resident of Jefferson County in Tallahassee, went to his assigned Precinct 6 to vote, he saw an unoccupied

FHP vehicle parked across the street. He considered this to be "unusual" because he has voted a number of times at the same precinct, but was not accustomed to seeing a law enforcement vehicle at the precinct.[84] Moreover, Mr. Nelson stated that he did not see any FHP troopers voting inside the precinct or leaving the precinct. Mr. Nelson added that his precinct is usually frequented by a large number of African American voters.[85] The FHP vehicle's presence piqued Mr. Nelson's curiosity, and after voting, he drove to a precinct in the downtown area on North Washington Street and saw another FHP vehicle parked outside of the precinct.[86]

In response to Mr. Nelson's allegations, Colonel Hall explained that those troopers only visited polling places to vote and no parking tickets were written in the parking lots of voting precincts.[87] He added that law enforcement vehicles utilize a service station close to the polling place, which may have explained their presence.[88] Furthermore, according to Colonel Hall, the FHP has "no policy that specifically excludes polling places from any law enforcement function."[89] There is also no FHP policy against troopers wearing their uniforms or using their vehicles while voting at any election.[90] At the request of supervisors of elections, the FHP has assisted in traffic control at polling places in the past, but the FHP received no such request for the November 2000 election.[91]

Florida Attorney General Robert Butterworth summarized his position on the use of law enforcement checkpoints on Election Day:

> What we do know is that a checkpoint on that date, Election Day, was absolutely not necessary for law enforcement purposes and similar checkpoints should never again be implemented on Election Day…No law enforcement barriers should be placed on Florida's roadways when people are going to and from voting.[92]

Regardless of the motivation for the Florida Highway Patrol's actions on Election Day, it appears that a number of voters perceived, at minimum that they were, negatively affected by the proximity of law enforcement officers to the precincts around Tallahassee.

CONCLUSION

A wide variety of concerns have been raised regarding Florida's voting system controls during the 2000 presidential election. Many Floridians were delayed at the polls or denied their opportunity to vote, in what proved to be a historic general election.

[1] Numerous complaints received by the attorney general's office and the Florida Democratic Party confirm this statement. *See* Complaints received by attorney general's office, Bates Nos. 0008948, 0009170, 0009173, and 0009279.

[2] Ava Zamites of Tampa waited for 1* hours but could not get through to the supervisor of elections office. Complaint received by attorney general's office, 0009277. In another instance, when Lynette Johnson was told that her name was not on the voter list, the poll workers attempted to call the supervisor of elections office. When they could not get through for an hour, she had to return to work. She continued to call on her own with no success. Complaint received by attorney general's office, 0009882.

[3] Cathy Jackson Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 80-87. Ms. Jackson explained that her polling place's building was being used by two different "districts" which apparently refers to precincts. Ms. Jackson belonged to the first, while the elderly white voter belonged to the second. Ibid. at 81.

[4] Cathy Jackson Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 80-87.

[5] Donnise DeSouza Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 56.

[6] Donnise DeSouza Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 54-58.

[7] Angenora Ramsey Testimony, Miami Verified Transcript , Feb. 16, 2001, pp. 87-96.

[8] Margarita Green Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 65-68.

[9] Johnnie Ballard Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 462-465.

[10] R. Jai Howard, Tallahassee Verified Transcript, Jan. 11, 2001, p. 84. Florida A & M University houses a voting precinct on its campus.

[11] Marilyn Nelson Testimony, poll worker, Precinct 232 in Miami Dade County, Miami Verified Transcript, Feb. 16, 2001, pp. 129, 137.

[12] Marilyn Nelson Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 129-138.

[13] Maria Desoto Testimony, poll worker, Palm Beach County, Miami Verified Transcript, Feb. 16, 2001, p. 142.

[14] Barbara Phoele Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 126-127. Ms. Phoele eventually posted the sign herself. Ibid.

[15] Barbara Phoele Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 126-27, 136, 156.

[16] Marvin Rickles, Jr. Testimony, precinct deputy, Precinct 74B in Palm Beach County, Miami Verified Transcript, Feb. 16, 2001, p. 134.

[17] Millard Suid Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 123.

[18] Randall Benston Testimony, precinct area chair, Precinct 6Z, 5Z and 7B, Miami Verified Transcript, Feb. 16, 2001, p. 457.

[19] John McGuire of Pinellas County complained that his Precinct 509 moved without prior notice. *See* Complaint received by the attorney general's office, Nov. 8, 2000, 0009246.

[20] Denise Ballard of Palm Beach County observed poll workers turn away voters at her precinct at 7:00 p.m., even though they had been in line prior to 7:00 p.m. *See* Complaint received by attorney general's office, 0009778. Similarly, Ted Dominick of Broward County complained that he arrived at the poll at 6:55 p.m. and was turned

away. *See* Complaint received by attorney general's office, 0009253.

[21] Lavonna Lewis, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 102-06.

[22] Donnise DeSouza Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 54-56.

[23] Susan Newman, Sworn Affidavit submitted to U.S. Commission on Civil Rights, Allegations of Election Day Irregularities in Florida, Jan. 31, 2001, p. 3.

[24] Susan Newman, Sworn Affidavit submitted to U.S. Commission on Civil Rights, Allegations of Election Day Irregularities in Florida, Jan. 31, 2001, pp. 3-5.

[25] Millard Suid Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 123.

[26] Millard Suid Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 123.

[27] Millard Suid Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 123.

[28] Robert Weisman, county administrator of Palm Beach County, Response to Commission's Interrogatory #1, Apr. 11, 2001, at 2.

[29] Fla. Stat. ch. 101.71(2).

[30] Fla. Stat. ch. 101.71(2).

[31] Fla. Stat. ch. 101.71(2).

[32] *See* Complaint of John McGuire of Pinellas County, Complaints received by attorney general's office, Nov. 8, 2000, 0009246.

[33] Felix Boyle Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 78. Photographs of Mr. Boyle's polling place have been attached as Appendix III.

[34] Felix Boyle Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 78-79, 90-91.

[35] Margarita Green Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 66-67.

[36] 42 U.S.C. § 1973 (1988).

[37] Attempts to enact legislation to allow individuals to register to vote during driver's license registration date back to the 1970s. In 1992, President George Bush vetoed a "motor voter" bill. In 1993, the NVRA was passed, despite severe opposition. Those opposing motor voter registration regulation maintained that it unjustly interfered with state sovereignty—even for federal elections—and imposed unreasonable costs on states.

[38] Fla. Stat. ch. 97.032 (2000).

[39] Fla. Stat. ch. 97.057 (2000).

[40] Fla. Stat. ch. 97.057 (1)(a) (1999).

[41] Testimony of Sandra Lambert, director of the Division of Driver Licenses, Miami Verified Transcript, Feb. 16, 2001, pp. 172-73. Ms. Lambert testified that "Of the seven organizations that do take applications, the Division of Driver Licenses has taken approximately forty-five percent of all applications." The testimony of Ms. Lambert regarding the dramatic increase in voter registration in the state of Florida was echoed by a member of the Election Canvassing Commission. Robert Crawford Testimony, Commissioner of Agriculture, Tallahassee Verified Transcript, Jan. 12, 2001, p. 186.

[42] Sandra Lambert, director of the Division of Driver Licenses, Letter in Response to Subpoena, March 14, 2001, p. 1. The Division has a disciplinary system for employees who violate requirements of the motor-voter process. Records indicate that in the year 2000 two employees received counseling, six employees received oral reprimands, and one employee received a written reprimand.

[43] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 173-75

[44] Testimony of Curtis Gans, Tallahassee Verified Transcript, Jan. 11, 2001, p. 135.

[45] Maria Desoto Testimony, poll worker, Palm Beach County, Miami Verified Transcript, Feb. 16, 2001, p. 146.

[46] Congresswoman Corrine Brown Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 315.

[47] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 231.

[48] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 232.

[49] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 231.

[50] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 232.

[51] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 232.

[52] Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 232.

[53] Marcia Seamans Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 110-113.

[54] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 1-4, Apr. 16, 2001, at 3-5.

[55] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 1-4, Apr. 16, 2001, at 3-5.

[56] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 1-4, Apr. 16, 2001, at 3-5.

[57] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 1-4, Apr. 16, 2001, at 3-5.

[58] Bill Zannie Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 466-471.

[59] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 5-6, Apr. 16, 2001, at 5-6.

[60] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 5-6, Apr. 16, 2001, at 5-6.

[61] Sandra Lambert, director of the Division of Driver Licenses, Response to Commission's Interrogatory # 5-6, Apr. 16, 2001, at 5-6.

[62] Maria DeSoto Testimony, poll worker, Palm Beach County, Miami Verified Transcript, Feb. 16, 2001, p. 46.

[63] Peter Alvins Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 370.

[64] Moya Burgess Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 381.

[65] Moya Burgess Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 381.

[66] Fla. Stat. ch. 104.0515 (3).

[67] Fla. Stat. ch. 102.101

[68] Fla. Stat. ch. 102.101.

[69] Fla. Stat. ch. 102.091.

[70] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 119. "Motorists who approach one of these checkpoints can expect to have their license, registration, insurance papers, tires, brake lights and other safety equipment examined. And those with vehicles in good working order and have all their required paperwork normally will be delayed for less than a minute." Ibid.

[71] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 119-120. In addition to the Oak Ridge Road checkpoint, the FHP established checkpoints in Bay and Escambia counties on Nov. 7, 2000.

[72] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 145.

[73] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 178-179. Colonel Hall added that the district commander, Captain Speers, did a "post survey of [the area surrounding the checkpoint] and out of the 100 cars that he checked during that period of time, I believe it was 82 percent were white . . . 18 percent minority in that area." Ibid., p. 179.

[74] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 32.

[75] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 121. Colonel Hall was unable to confirm if the conversation with the attorney general's office was memorialized in any way other than in FHP's investigative report of the Oak Ridge Road checkpoint. Ibid., p. 138.

[76] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 121. Colonel Hall referenced Florida Highway Patrol Policy Manual Section 17.07. According to Colonel Hall, the Oak Ridge Road checkpoint appeared on previous approved lists, but he did not believe that the media notification procedures were avoided in order to prevent protests from civil rights organizations. Ibid., pp. 179-180.

[77] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 140.

[78] Roberta Tucker Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 36-37.

[79] Roberta Tucker Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 37.

[80] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 140.

[81] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 137.

[82] Col. Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 142.

[83] Roberta Tucker Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 64-65.

[84] John Nelson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 26-27.

[85] John Nelson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 28. Mr. Nelson added that for the first time in his voting experience at his precinct, rather than simply showing his voter registration card, he was asked for two pieces of identification, which he considered to be "unusual." Ibid., p. 29.

[86] John Nelson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 28.

[87] Col. Charles Hall, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 147-148.

[88] Col. Charles Hall, Tallahassee Verified Transcript, Jan. 12, 2001, p. 148.

[89] Col. Charles Hall, Tallahassee Verified Transcript, Jan. 12, 2001, p. 143.

[90] Col. Charles Hall, Tallahassee Verified Transcript, Jan. 12, 2001, p. 144.

[91] Col. Charles Hall, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 143-144.

[92] Robert Butterworth Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 199. Attorney General Butterworth also testified:

Therefore, I have prepared the legislation that I am forwarding to the Florida legislature that would prevent routine safety traffic checkpoints on Election Days anywhere within the state of Florida. There would be exceptions for roadblocks dictated by fleeing felons or other extreme circumstances.

DRAFT STAFF REPORT ON

Voting Irregularities in Florida During the 2000 Presidential Election

(Not Official Unless and Until Approved by a Majority of the Commissioners)

Chapter Three

Responsibility Without Accountability?

> *In the first paragraph of the Declaration [of Independence], is the assertion of the natural right of all to the ballot: for how can the "consent of the governed" be given, if the right to vote be denied?* [1]

Article I, section 1 of the Constitution of the state of Florida provides that "[a]ll political power is inherent in the people."[2]The right to vote is the most obvious exercise of this inherent power. The Florida state election laws should be guided by this constitutional mandate. Further buttressing this constitutional mandate is the National Voter Registration Act of 1993 where the United States Congress emphasized "the right of citizens of the United States to vote is a fundamental right [and] it is the duty of the federal, state and local governments to promote the exercise of that right…."[3] State election laws should be drafted and interpreted in such a manner that everyone's right to vote is cherished and protected. Instead, there are several provisions of the Florida election law that appear to impede rather than foster this precious right.[4]

Provisions impeding the right to vote include those that permit top government officials to plead an alleged "lack of authority" to evade any responsibility to ensure that elections are fairly and uniformly conducted. The governor of Florida claims moral authority over election matters but claims no the legal authority rests with the secretary of state.[5] The secretary of state, who has obvious legal power, claims no practical authority stemming from a lack of enforcement authority, limited power to promulgate administrative regulations, and shared constitutional authority with county supervisors of elections in overseeing elections.[6] The supervisors of elections have the constitutional authority to conduct elections, but maintain they are not given the resources necessary to ensure that every legal voter can exercise that right should he or she choose to vote. In addition, supervisors of elections, by default, perform responsibilities assigned by law to the governor and the secretary of state.[7]

WHO'S IN CHARGE?

Florida's governor is the state's chief executive officer who "shall take care that the laws be faithfully executed."[8] Florida's secretary of state is the chief election officer,[9] and oversees the Division of Elections. Each county has an elected supervisor of elections, except one.[10] Together, the secretary of state and the county election supervisors preside over Florida's elections.

Governor John Ellis Bush

When asked about his responsibilities to ensure the election laws of Florida were faithfully executed during the November election, Governor Bush testified before the Commission that he had no real legal authority over election matters except for certifying the election and serving as a member of the State Canvassing Board. He indicated that he recused himself from participating on the State Canvassing Board because his brother was one of the presidential candidates. [11] Governor Bush testified that "governors have the moral authority … to make sure that the laws, not only the state laws, but … also federal laws are upheld…."[12] When asked what authority and responsibility he had regarding preparation for the November 7 presidential election, Governor Bush testified that he had none and that "the secretary of state and the 67 supervisors of elections were responsible for that and they carried out their duties."[13]

Under the Florida Constitution, the governor is charged with ensuring that "the laws be faithfully executed."[14] Governor Bush apparently delegated the responsibility to ensure that the election laws are faithfully executed.[15] Under the Florida election law, the governor is also specifically empowered to "appoint special officers to investigate alleged violations of the elections laws …"[16] Governor Bush testified that he had not appointed any officers to do any investigation of alleged irregularities surrounding the November 7 election but would "[i]f there was a reason to do so."[17] As of the date of this report there is no evidence that the governor has exercised this authority by appointing special officers to investigate the widespread allegations[18] of violations of the Florida election law.

Secretary of State Katherine Harris

The Florida legislature was unequivocal and specific when it defined the responsibilities of the secretary of state in the Florida Election Code.[19] The secretary of state is obligated by Florida law to:

1. Obtain and maintain uniformity in the application, operation, and interpretation of the election laws.
2. Provide uniform standards for the proper and equitable implementation of the registration laws.
3. Actively seek out and collect the data and statistics necessary to knowledgeably scrutinize the effectiveness of election laws.
4. Provide technical assistance to the supervisors of elections on voter education and election personnel training services.

Chapter Four

Resource Allocation

> *I do know how to shop and bring home the bacon* [,] *but again, my concern is having the resources so that I can get my job done* .[1]

The state of Florida provides an annual fiscal mechanism to address the state's budgetary needs for election matters. However, Florida residents receive direct Election Day resources from their respective county supervisors of elections offices. These county offices depend primarily on appropriations from their respective boards of county commissioners, and receive limited state funding. As a result, factors such as, varying county budgetary limits and the lack of state funding initiatives to supervisors of elections offices create an opportunity for an unequal distribution of election resources and thus the possibility of voter disenfranchisement.

WHO PAYS?

The State Budget Process

Financial resources are allocated for public needs through Florida's budget process. The state's budgetary fiscal year begins in July, while its legislature convenes annually from March to May.[2]

The budgetary process begins when Florida's state agencies present their appropriation requests to the governor each September. These requests are based on agencies' perceptions of their anticipated long-term program planning needs. The Governor's Office of Policy and Budget analyzes these requests and offers its findings to the governor.[3] The governor then compares the proposed budgets with the state's available financial resources and program priorities, and submits his fiscal recommendations to the Florida legislature in January.[4] During the next phase of the budget development process, the legislature reviews the governor's proposed budget and receives feedback from members of the public and agency officials in reference to anticipated fiscal allocations.[5] Lastly, as part of Florida's legislative session, the state House of Representatives and the Senate each vote appropriations bills (i.e., "general appropriations bills") for the state.[6] The Speaker of the House of Representatives and the President of the Senate ultimately sign the new General Appropriations Act.[7] The budgetary process is not completed until the governor signs the Act.[8] Although the governor of Florida has the authority to veto funding for line item budgetary requests, a majority vote in Florida's House of Representatives and the Senate is still required to pass the state's budget.[9]

Appropriations to the Division of Elections

According to Secretary of State Katherine Harris, the Division of Elections submits its budget requests to Florida's legislature and the governor's office, in accordance with the state's appropriations process. Although the secretary of state does not directly communicate with the governor on budgetary issues, the division directors of her office interact with the governor's staff on fiscal concerns.[10] The secretary of state also has the opportunity to submit a supplemental budget that can include requests for additional funding to Florida's counties.[11]

In terms of overall fiscal authority, Jeb Bush, governor of the state of Florida testified before the Commission that he is responsible for funding election needs in the state, while the secretary of state is directly accountable for the Division of Elections. He explained that "funding to provide adequate training or for the [voting] machinery is determined by local county commissioners." [12] However, Governor Bush anticipated that this policy may be changed with the advent of recommendations from the governor's Select Task Force on Election Procedures, Standards and Technology, "recognizing that some counties handled this job, because of their machines, in a way that yielded a dramatically different result than others."[13]

Katherine Harris, secretary of state, testified that her office is divided into seven divisions, including one for elections. This division is managed by a director—L. Clayton Roberts—who is responsible for implementing the secretary of state's mandates. Ms. Harris is then accountable for supervising the operations and delegating daily operational functions to the division directors.[14] The director's office of the Division of Elections serves as the secretary of state's designee for functions pertaining to elections, such as:

- offering voter education assistance to the public,
- coordinating statewide workshops for supervisors of elections on election law updates,
- supervising and approving continuing education training courses for supervisors of elections,
- maintaining the state's voter fraud hotline,

- educating the public on voter fraud, and
- providing technical assistance on voter education and election training services for county supervisors of elections.[15]

In terms of resources allocated to the secretary of state's office, in 2001, the office employs 709 full time equivalent employees (FTEs), with a $161 million budget.[16] Her office generates approximately $171 million in revenue.[17]

The following tables portray the Division of Election's budget appropriations from fiscal year 1997 through fiscal year 2001. According to the data provided to the Commission, the Division was appropriated the greatest amount of funding of approximately $6.1 million in FY 1999–2000. The data also indicates that during the time period of FY 1997 through FY 2001, the Division employed the most full time equivalent employees (47) in FY 1997–FY 1998.[18]

Table 4-1: Division of Elections - Appropriations for Fiscal Years 1999–2000 and 2000–2001

FISCAL YEARS	AGENCY'S REQUESTED BUDGET	STATE APPROPRIATION	TOTAL FTEs
FY 2000-2001	$5,871, 581	$4,600,000	39
FY 1999-2000	$6,616,019	$6,108,016	43

Source: State of Florida, BPEADL01 LAS/PBS System, Budget Period 1989-2000, Appropriation Category Summary, Exhibit A - "Issue Summary," May 14, 1999 [excerpt]; State of Florida, BPEADL01 LAS/PBS System, Budget Period 1990-2001, Exhibit D-3A - "Expenditures by Issue and Appropriation Category."

Note: *But see* Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 289 (According to Secretary Harris, in 2001, the Division of Elections has 30 full time equivalent employees and is allocated approximately $5.4 million.).
Source: The figure of $4,600,000 is found "The Florida Government," *Office Program Policy Analysis and Government Accountability* , n.d., <http://www.oppaga.state.fl.us/profiles/4098/print.asp> (Mar. 17, 2001) (hereafter cited as *FGAR*). For FY 2000-2001, the state appropriated $4.6 million in general revenue, and $1.3 million in trust funds.

Table 4-2: Division of Elections - Appropriations for Fiscal Year 1998–1999

FISCAL YEAR	APPROVED BUDGET
FY 1998-1999	$3,974,746

State of Florida, BAALRL01 LAS/PBS System, 1997 Appropriation Ledger, Detail Report by Fund/Category, Tentative Original Approved Budget, June 29, 1997.
Note: The approved unreleased budget for the Division of Elections was $2,073,372 in FY 1998-1999.

Table 4-3: Division of Elections - Appropriations for Fiscal Year 1997–1998

FISCAL YEAR	BUDGET	TOTAL FTES
FY 1997-1998	$3,430,634	47

Source: State of Florida, BPEXBL01 LAS/PBS System, Budget Period: 1989-2000, Exhibit B - "Appropriation Category Summary," May 14, 1999.

In addition, Secretary of State Katherine Harris testified before the Commission that "cuts in the Division of Elections occurred prior to my election as secretary of state [in 1998]."[19] However, the above data indicates that the Division of Elections also experienced a decrease in state appropriations and full time equivalents from FY 1999–FY 2000 to FY 2000–2001.

THE STATE'S CONTRIBUTION TO FLORIDA'S ELECTION RESOURCES

The state of Florida provides minimal, if any, direct financial support for election resources. In fact, Jane Carroll, former supervisor of elections for Broward County maintained that she did not believe there was a legal provision that would have allowed her to request additional funding from the state's Division of Elections, even if the financial resources were available.[20] James Roberts, Monroe County administrator also reinforced Ms. Carroll's perspective, by stating "there is no provision in the state statute that automatically allows Monroe County to ask the state of Florida to provide money for elections."[21] However, Mr. Roberts also indicated that legislative or administrative budget processes could be used to request supplemental funding for elections.[22]

Other current and former government officials expressed similar positions regarding the state's contribution to local election needs:

- Linda Howell, supervisor of elections for Madison County, did not ask the state Division of Elections for any additional funding for her county, because she knew the efforts would be futile.[23]
- Harry Sawyer, supervisor of elections for Monroe County indicated that his office relies upon the state's Division of Elections for limited needs. These include providing a listing of qualified election candidates, legal advice, and updates on legislation.[24]

- L. Clayton Roberts, director of the state's Division of Elections testified that the state of Florida does not provide the counties with any funding for voter outreach/education purposes.[25]

The Division of Elections did, however, initiate some level of voter education outreach to Florida's residents.[26] In April 2000, the Division entered into a contractual agreement with the Florida Cable Telecommunications Association to create a 30-second public service announcement (PSA) in English to educate Florida's residents on voter fraud.[27] The Division of Elections paid $20,000 for the PSA.[28] The announcement aired between 6 a.m. and midnight from August 1, 2000, through November 7, 2000, in nine primary cable television areas in Florida.[29]

Subsequently, in August 2000, the Division of Elections also contracted with Next Generation Network, Inc., a for-profit Minnesota corporation to provide locations to display voter fraud public service announcements in Florida.[30] Next Generation Network, owns and operates video monitors in 706 convenience stores in the state, which are primarily used to broadcast messages of interest to the general public.[31] Pursuant to the Division's contract with Next Generation Network, Inc., the state paid $11,469.50 for these services.[32] Similarly, the director of the Division of Elections testified before the Commission that "[w]e provide posters to the supervisor of elections in Spanish and English, which are posted in the polling place that explain to the voters the basics of voting….As far as the mechanics of voting and showing voters how to vote, we do not participate in that because different counties have different systems."[33]

The Division of Elections then entered into an agreement in September 2000 with the Victory Group, Inc., a Maryland communications and media firm, to produce a 30-second television commercial entitled, "The Power," in order to reinforce the "Get Out to Vote" campaign in Florida.[34] General Norman Schwartzkopf appeared in this advertisement.[35] The total cost to the Division of Elections for the commercial was $34,500.[36]

In spite of this, some members of the public remained skeptical about the effectiveness of the Division of Elections' voter outreach efforts. According to Tony Hill, a former State Representative, "[t]he ad featured [Secretary of State Katherine Harris] at the beaches and thoroughbred horses and Norman Schwartzkopf. The message was not directed at voters least likely to vote. The code was protection of freedom, the question is for whom."[37] Mr. Hill stated that the public services announcement was "a waste of time."[38] In contrast, Mr. Roberts indicated that his office did not receive any requests from local county election officials that they were in dire need of state assistance for their election preparation initiatives.[39]

Nevertheless, one supervisor of elections maintained that the foundation was already established for the state's inadequate allocation of Election Day recourses prior to the November 2000 election.[40] According to Mr. Sancho, when Katherine Harris was campaigning for her current position as secretary of state, her campaign platform did not focus on reforming Florida's election process.[41] Instead, the emphasis was placed on other state program areas, such as cultural affairs, and international trade relationships. In addition, once Ms. Harris was elected as secretary of state, a number of her Division of Elections staff left their positions and were replaced by new and inexperienced employees.[42] Mr. Sancho then concluded that these two factors contributed to one of the reasons why county supervisors of elections "didn't depend on that office this year because simply they were too new. We knew more about the [elections] process than they did."[43]

COUNTY CONTRIBUTIONS TO FLORIDA'S ELECTION RESOURCES

Florida's county supervisors of elections generally anticipate a lack of state financial resources for election needs, such as voter education outreach in their respective counties. As a result, county supervisors of elections either try to seek financial assistance from their respective boards of county commissioners, supplement budgetary needs by other means, or have inadequate voter education outreach initiatives in their counties. The supervisors of elections view voter education and outreach, particularly for first time voters, as critical elements for successful election outcomes. For example, Ion Sancho, supervisor of elections for Leon County maintained that voter education could have greatly reduced the number of voter errors made on Election Day.[44] According to Mr. Sancho, if county supervisors of elections can get adequate funding from their respective boards of county commissioners, then they can usually offer sufficient outreach to their communities. He determined that in most instances, the supervisors of elections will satisfy the minimum state legal requirement of purchasing an advertisement in the newspaper to educate voters on the election process.[45]

Similarly, supervisors of elections are often unsuccessful in obtaining sufficient funding from their respective boards of county commissioners for election needs. In addition, some counties have larger budgetary limits for voting equipment, while smaller Florida counties do not have the resources to pay for similar resources.[46]

- According to Denny Hutchinson, former Gadsden County supervisor of elections, county commissioners do not consider supervisors of elections offices as high priority funding needs.[47] Ms. Howell and Mr. Sancho also agreed with Mr. Hutchinson's testimony by stating that supervisors of elections' salaries are less than those of other Florida constitutional officers.[48]
- Jim Smith, co-chairperson of the Task Force on Election Procedures, Standards and Technology, testified that the task force has heard testimony from various supervisors of elections who have requested that their County governments provide them with more modern voting equipment. Their requests were not granted.[49]

In those instances when supervisors of elections are unsuccessful in obtaining additional funding from their respective boards of county commissioners, there is currently little, if any, recourse.[50] Ms. Carroll, former supervisor of elections for Broward County, explained that the supervisor of elections position is the only constitutional office that has no appeals process to challenge the approved funding amount.[51] Her testimony described how in 1993, when the Broward County Board of Commissioners denied her budget request for new voting machinery to replace the county's existing punch card voting system, there were no state or federal funds available to alternatively finance her request.[52]

Similarly, Miriam M. Oliphant, the incumbent supervisor of elections for Broward County, also confronts lingering obstacles in obtaining sufficient local funding for her county's voting needs. During the time of the Commission's Miami hearing, Ms. Oliphant had anticipated sufficient financial support from Broward County.

> COMMISSIONER WILSON: My last question…is your budget. How have you tried to increase it and have you put forth plans to increase it and by how much?
>
> MS. OLIPHANT: Yes, I have had the opportunity to speak with the [Broward] County Administrator and he has given me [the] go ahead…to...prepare a budget. I'm looking at more outreach education [and] community voter registration….
>
> I'm concerned that when I got into a community, whether it is the Haitian American community or Hispanic community, that I have the diversity that I need and the professional communication to go in there and communicate….I am looking to expand staff and bring in [t]he resources into [the supervisor of elections] office so that we can go out into the community and…communicate and educate people on voter education awareness.
>
> I right now operate on a five million dollar budget with approximately … sixty-one employees…. I am anticipating with the new voting equipment that we're going to be looking at some additional dollars…. [T]here's going to be additional dollars for technology, for the training of the people and other outreach services.
>
> So we're talking, and I mentioned [this] to the chairman of the county commission, maybe an additional $2 million.[53]

In spite of the widespread call for election reform in Florida, the Broward County Board of County Commissioners recently requested that the supervisor of elections office for Broward County reduce its budget submission by 5 percent for fiscal year 2002, due to anticipated economic difficulties in the county.[54] Moreover, the board

> acknowledge[d] the need to replace the current voting system and appreciated [Ms. Oliphant's] recent correspondence regarding the ballpark cost figures pending the outcome of the State legislature's decisions on this matter. [Mr. Desjarlais] encourage[d] [Ms. Oliphant] to search for efficiencies in [Broward County's] current operations and look toward the reprioritization of . . . existing funds to support any operating improvements that [she] deem[s] critical.[55]

In response, the supervisor of elections office for Broward County emphasized the need for appropriate county funding to support voter outreach efforts to multi-cultural county residents, the replacement of the current punch card voting and tabulation system, the impact of legislative reapportionment, advertising and public service announcements, initiatives that address systemic problems that occurred during the November 2000 presidential election, staffing increases, and other concerns.[56] Ms. Oliphant ultimately advised the Broward County Board that she may need to again request supplemental funding from the board, if pending state legislation has a negative impact on her office's fiscal year 2002 budget appropriations.[57]

Another supervisor of elections has an alternative method of addressing reduced budget requests. Harry Sawyer, Monroe County supervisor of elections contended that denied or reduced proposed budgets can be addressed by interpreting current Florida statutes.[58] Specifically, a Florida statutory provision requires that "each supervisor of elections shall certify to the board of county commissioners, or county budget commission …a proposed budget of income and expenditures to fulfill the duties, responsibilities, and operation of the office of the supervisor of elections for the ensuing fiscal year of the county."[59] Moreover, a subsequent provision states that, "[t]he *independence* of the supervisor of elections shall be preserved concerning the purchase of supplies and equipment; the selection of personnel; and the hiring, firing, and setting of salaries of personnel."[60] As a result, Mr. Sawyer suggested that the independent status of his position as a supervisor of elections requires that he must protect his proposed budget, in order to fulfill his official duties.[61] He indicated that if Monroe County reduced its supervisor of elections' office budgetary request in these areas (i.e., supplies and equipment, the selection of personnel, and employee salaries), he would be "entitled to take legal action to bring my budget in compliance with state law."[62] Hence, supervisors of elections who are in similar budgetary scenarios have to devise their own strategies for supplementing unmet financial needs, or else witness the residents of their counties do without needed voting resources.

State Support and Election Day Preparations

Similarly, the state provides relatively little, if any, financial support to ensure that the supervisors of elections can meet their obligations on Election Day. Instead, the Division of Elections, under the secretary of state, sets forth the minimum requirements to meet these regulations. Further, Secretary of State Katherine Harris testified at the Commission hearing that,

> [a]s to the basic structure of how elections are conducted in Florida, its underlying foundations are the 67 supervisors of elections. Forty-four of these supervisors are Democrats, 19 are Republicans, three are nonpartisan and one is a nonpartisan appointed officer. These are public officials that our Constitution and statutes hold accountable for (1) carrying out the registration of qualified electors; (2) handling the qualifying process for candidates for count offices and for other local offices with jurisdiction in one county; and (3) conducting the elections, including the hiring and training of poll workers, selecting of poll sites and purchase and maintenance of any state-approved voting systems.[63]

While Secretary Harris acknowledged that the Department of State is charged with obtaining and maintaining uniformity in application, operation and interpretation of the election law, she testified this "goal is achieved by the Division's authority to issue formal and informal advisory opinions to supervisors of elections and through the opportunities to provide training and educational assistance to our supervisors of elections, other

agencies and the public."[64]

Secretary Harris indicated that she delegates the duty to provide technical assistance to the Division of Elections on voter education and election personnel training services because she "consider[s] those people to be the experts and [to] be able to give far greater technical assistance than could I."[65] She maintained that while the Division does provide voter education and training services, the responsibilities of poll worker training and election matters are left to the supervisors of elections who are "independently elected local officials who conduct elections."[66]

When the secretary of state did request $100,000 in funds from the Florida legislature for a media budget to aid in the "get out the vote" efforts of associations in Florida, the governor, however, "zero funded that and refused to fund it in his budget."[67] As a consequence, "there was no budget in the state of Florida for voter education which relates to media."[68] Thus, counties and their supervisors of elections were required to seek funding from county legislatures or from other fund-raising activities.[69] Ion Sancho testified that "the Association of Supervisors of Elections, went out and raised our own money from private corporations in the attempt to set up some sort of a voter education and voter turnout fund. And essentially that's how the process has worked in Florida."[70]

The Commission received testimony that the Division of Elections does provide technical assistance to supervisors of elections on voter education and election personnel training services upon request. The problem, noted one witness, is "from county to county you've got so many different voting systems…they might can provide that technical assistance for this county…[but] then you've got to turn around to another county and provide a different type of assistance, and you've got…10, 12 or 14 different voting systems in the state of Florida."[71]

The lack of funding, however, continues to be one of the most challenging obstacles that confronts Florida's supervisors of elections. According to Leon County's supervisor of election, the paucity of resources not only affected voter education, "but they affect the hiring and training of election-day workers, as well as providing polling locations which must be convenient and accessible to our population if we want voters to vote."[72] Gadsden County's supervisor of elections, Shirley Knight, also confirmed this by testifying that there must be more money for training poll workers and additional polling places. In Gadsden County, she noted, people drive "miles and miles" to vote.[73]

Thus, individual counties struggle to shoulder the bulk of the responsibility for training poll workers. The counties vary widely in their approaches to poll worker training. As a result, it is unclear whether the training approaches and quantity of instruction offered in different counties were beneficial to their respective poll workers.[74] For example, in Monroe County, the supervisor of elections holds a half-day training course for all poll-workers and additional training for precinct leaders and workers responsible for the AccuVote machines used in the county. Teresa LePore, the supervisor of elections in Palm Beach County testified:

> I have what I consider—I consider it extensive, my poll workers consider it over-extensive, training of my poll workers. My precinct clerks, the clerks are the ones that are in charge of the precinct, have to attend a two hour workshop. The inspectors are the ones that give the demonstration, check-in the voter, for about an hour and a half. The precinct deputy who sits at the door greeting people coming in is about an hour.
>
> The clerk and inspectors, because they're the ones that actually deal with the voters, I have a power point presentation and a poll worker manual which is in the documents that I submitted, detail by detail of how to handle a variety of situations.
>
> First, when the voter comes in, all voters coming in are supposed to be offered a demonstration of the equipment. They're not forced to take it but the offer is supposed to be there.
>
> The assistance devices are supposed to be out on the tables so if somebody needs it. We also have, in addition to the page magnifier…we use punch card obviously—a handicap stylus is what it's called. It looks like a small tennis ball with a stylus on the end of it so people who might have trouble holding the small punching device can use that to punch their ballots.
>
> I explain to them about if somebody comes in and needs assistance in voting, the procedure to do that. They can bring someone of their own choosing in or two poll workers of the opposite political party to come in and help them.
>
> About the spoiled ballot, the time limit, we go through this in detail.[75]

Nevertheless, Ms. LePore recognized the limitations that exist in training a large number of poll workers:

> As far as the voting machines, I tell them all to put at least one machine on a table so that somebody who might have trouble standing can sit and vote, or somebody in a wheelchair can come up to the table and vote in private. I can't guarantee that they all do it. I have 531 precincts in my County and like I said, almost 4,000 workers. I instruct them. They have the written materials. And I can only hope that they do what they're told to do.[76]

ELECTION DAY RESOURCES

On November 7, 2000, one of the most significant Election Day issues became the availability of resources to handle the large number of voters. Voters and poll workers who testified at Commission hearings held in Tallahassee and Miami were in one accord about the various problems that occurred such as, inadequate telephone communication systems in the offices of the supervisor of elections, the inability to reach their respective

supervisors of elections offices on Election Day to verify individuals' voter registration, and the accessibility of computerized voter registration information.[77]

Difficulties that Occurred on Election Day

The Commission heard testimony from some of Florida's voters and poll workers, who expressed their dissatisfaction with the resources that were available to them on November 7, 2000. Specifically, several witnesses observed that on Election Day, inadequate telephone systems in supervisors of elections offices affected precinct workers' abilities to confirm voters' registration status.[78] The following line of questioning during the Commission's Miami hearing portrays this difficulty:

> MR. FOREMAN [questioning witness]: Ms. Phoele, can you give me an idea of how long people were waiting in your precinct in order to verify whether they would be eligible to vote?
>
> MS. PHOELE: Hours, and a lot of them got discouraged and left and didn't vote, because our clerk could not get through to the Board of Elections. It's the same thing over and over."[79]
>
> MR. FOREMAN [to witness Marilyn Nelson]: Could you share with us your observation?…
>
> MS. NELSON: Of course, we couldn't get through to downtown. We were on the phone the majority of the day. And some time[s] the phone would ring for hours, just ring and ring and ring. No one would ever pick it up and when they finally picked it up, you'd be on there for hours again. We had lines of people waiting just to see if they could vote.[80]

One poll worker also noted that some African Americans with current voter registration cards were unable to vote because their names were not included on the county's registered voter list.[81] Moreover, poll workers believed they could not remedy this problem by using voting by affidavit as an alternative.[82] This belief ultimately contributed to the number of Florida residents who were unable to cast their vote on Election Day. For example, Maria DeSoto, a Broward County poll worker, testified that in her opinion at least 40 people were turned away from the voting precinct, due to the poll workers' inability to contact the supervisor of elections office.[83]

Computer Access

Telephonic communication was not the only method for some election precincts to verify the accuracy of their precincts' voter registration registers. In one county, precinct workers were provided with laptop computers in order to check the accuracy of the precinct registers against the master county registration list. For example, David Leahy, supervisor of elections for Miami-Dade County, had access to 18 laptop computers.[84] Mr. Leahy testified that he placed most of these computers, regardless of the demographic composition of the precinct, in precincts where the voting population was the most transient.[85] As a result, the vast majority of the laptop computers in Miami-Dade were situated in mostly Cuban American voting precincts.[86] Mr. Leahy noted that only one laptop computer was located in a largely African American precinct.[87]

Broward County also used laptop computers in 31 of its largest precincts on Election Day. The supervisor of elections for Broward County explained that the original purpose for these computers was to facilitate access to county voter registration information from the precinct level.[88] In retrospect, Ms. Carroll determined there was limited success with this technological venture. In spite of the training that the staff received, "they didn't always know exactly what they were looking up on the computer."[89]

CONCLUSION

The state's Division of Elections receives yearly fiscal appropriations for Florida's elections. The state of Florida, however, provides few, if any, direct financial resources to supervisors of elections offices. As a result, county supervisors of elections rely on their respective boards of county commissioners and/or private financing sources to fund various election preparation needs, such as: voter education and outreach, voting equipment, polling precincts' resources, poll worker training, and providing appropriate polling locations and communication systems.

This lack of financial resources hinders the ability of Florida's supervisors of elections in providing all of their county residents an equal opportunity to vote.

[1] Miriam M. Oliphant, supervisor of elections for Broward County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 287.

[2] "Florida Budget Process," n.d., <http://www.acs.org/government/stateinfo/flbg.pdf> (Mar. 20, 2001) (hereafter cited as "Florida Budget Process"). Although the legislative session is limited to sixty calendar days, the duration of the session may be extended by a three-fifths vote in the State House of Representatives and the Senate.

[3] "Budget Process Overview," *Florida e-Budget* , n.d., <http://www.ebudget.state.fl.us/overview.asp> (Mar. 20, 2001) (hereafter cited as "Budget Process Overview") .

[4] "Budget Process Overview."

[5] "Budget Process Overview."

[6] "Budget Process Overview." "Differences between the Senate and the House budgets are resolved in a joint conference committee." Ibid.

[7] "Budget Process Overview," *Florida e-Budget* , n.d., <http://www.ebudget.state.fl.us/overview.asp> (Mar. 20, 2001).

[8] "Budget Process Overview." Once the legislature passes the budget, the new appropriation becomes valid beginning each July 1st.

[9] "Florida Budget Process"; "Budget Process Overview. " *See* L. Clayton Roberts, director of the Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 269. Mr. Roberts cited an example of Governor Bush not approving the Division's request for voter education funding. As a result, the request was not presented to the Florida legislature for approval.

[10] Katherine Harris, secretary of state, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 280-281.

[11] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 281.

[12] Jeb Bush, governor of the state of Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 98-99.

[13] Jeb Bush, governor of the state of Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 99. *See* Collins Center for Public Policy, Revitalizing Democracy in Florida: The Governor's Select Task Force on Election Procedures, Standards & Technology," n.d., <http://www.collinscenter.org/usr__ doc/52816.doc, p. 19> (Mar. 21, 2001), p. 19 (hereafter cited as "Governor's Select Task Force"). The task force noted that the state of Florida should provide its counties with adequate funding in order to develop new voting systems and high standards to ensure that voters understand how to use these systems.

[14] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 239-240.

[15] "About Us—Director's Office," *Division of Elections—Florida Department of State* , n.d., <http://www.election.dos.state.fl.us/about/director.shtml> (May 9, 2001). The office also interprets Florida's elections laws, provides technical assistance to supervisors of elections on voting systems, offers procedural training to all relevant state agencies on implementing the National Voter Registration Act of 1993, collects statistics on the effectiveness of Florida's election laws, ensures that voter registration applications and forms comply with the parameters of the Voting Rights Act of 1965, and establishes rules to execute the state's election law provisions.

[16] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 267, 277-278.

[17] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 277-278.

[18] *But see* L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 269. Mr. Roberts testified that previously the Division of Elections had 70 full time equivalent employees.

[19] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 268. *See also* "Running the Recount - - GOP Loyalist Vows Fairness in Overseeing Florida Tally," *ABCNEWS.Com* , Nov. 15, 2000, <http://abcnews.go.com/sections/politics/Daily news/Election_harrisbio001113.html>(Mar. 27, 2001) (Secretary Harris was elected as secretary of state in 1998).

[20] Jane Carroll, former supervisor of elections for Broward County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 304-305. Additionally, Ms. Carroll explained that "we have an unfunded mandate statute that says that the Florida legislature cannot mandate that the local governments or counties in particular spend dollars mandated by the Florida legislature if it goes above the amount of $500,000."

[21] James L. Roberts, Monroe County administrator, Response to Commission's Interrogatory #6, Apr. 9, 2001.

[22] James L. Roberts, Resp. to Interrog. #6.

[23] Linda Howell, supervisor of elections for Madison County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 102.

[24] Harry Sawyer, supervisor of elections for Monroe County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 344-345.

[25] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 287. *But see* Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 291. Secretary Harris believed that the Florida legislature should be more responsive to local funding needs, due to the closeness of the November 2000 presidential election.

[26] *See also* Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 57. Mr. Sancho testified that in 1992, Jim Smith, in his former capacity as the secretary of state, made arrangements with the Florida Association of Broadcasters in order to obtain free 30-second television air-time for voter outreach purposes. The county supervisors of elections then used this air-time to educate Florida's residents on voting information. According to Mr. Sancho, "[w]e used some of those same spots in 1994, but no secretary of state after that has provided any resources like that to the Florida Association of Supervisor[s] of Elections or elections in general." Ibid., pp. 57-58.

[27] L. Clayton Roberts, director, Florida Department of State, Division of Elections, "Provider Contract," Apr. 7, 2000, 0014713; Katherine Harris, secretary of state, Florida Department of State, "General Requisition," Apr. 11, 2000, 0014737. *See* L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 270-71. *See also* Florida Outdoor Advertising Association, Inc., "Contract for Statewide Donated Advertising Space," Apr. 21, 2000, 0015151. (The Division of Elections spent $51,000 for the installation of at least 200 billboards from August 2000 through November 2000. These signs advocated 'Stamp[ing] Out Voter Fraud'). *See generally* Florida Department of State, Division of Elections, "General Requisition," Jan. 6, 1999, 0015389; Florida Department of State, Division of Elections, "General Requisition," Jan. 26, 1999, 0015390; The Print Shop of Tallahassee, Inc., "Invoice," Aug. 27, 1999, 0015473; The Print Shop of Tallahassee, Inc., "Invoice," Aug. 13, 1999, 0015491 (Previously, in 1999, the Division of Election expended approximately $14,262 for Voter Fraud Notice posters in English and Spanish. The posters were ordered for distribution to county supervisors of elections' offices).

[28] L. Clayton Roberts, "Provider Contract," 0014713.

[29] L. Clayton Roberts, "Provider Contract," 0014713.

[30] L. Clayton Roberts, director, Florida Department of State, Division of Elections, "Contract for Services," Aug. 8, 2000, 0014837; Florida Department of State, Division of Elections, 0014853. The advertisement stated, "Call (toll free) 1-877-868-3737[,] VOTER FRAUD[,] Division of Elections[,] Florida Department of State." Ibid. *See also* Charlotte Brand, director and chief executive officer, Florida Outdoor Advertising Association, Inc., "Contract for Statewide Donated Advertising Space," Apr. 21, 2000, 0015151 (Florida Outdoor Advertising Association, Inc. provided at least 200 billboard locations for the Division's voter fraud advertisements from August 2000 to November 2000. The Division paid $51,000 for these services).

[31] L. Clayton Roberts, "Contract for Services," 0014837. *See generally* L. Clayton Roberts, "Contract for Services," 0014838.

The Vendor [Next Generation Network, Inc.] shall broadcast the Division's announcement in three, 3-day broadcast periods for a total of nine (9) days coinciding with two days before and the day of the first primary, the second primary and the general election. Each broadcast period shall consist of 72 hours beginning at midnight (12:00 a.m.) on the commencement date and ending at 11:59 p.m. on the termination date….During each broadcast period the Division's announcement shall be broadcast at least 500 times per day at each of the 706 Florida locations….

Ibid.

[32] L. Clayton Roberts, "Contract for Services," 0014838.

[33] L Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 286-287; Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 101 (Mr. Sancho indicated that the only voter outreach assistance the state of Florida provides is supplying the counties with voter education pamphlets and posters).

[34] L. Clayton Roberts, director, Florida Department of State, Division of Elections, "Contract for Production of 'Get Out to Vote' Public Information Campaign," Sept. 9, 2000, 0014745; The Victory Group, Inc., "Description of Services," Sept. 30, 2000, 0014810.

[35] Katherine Harris, secretary of state, Florida Department of State, "[Draft] Letter to Station Managers," Oct. 6, 2000, 0014792.

[36] The Victory Group, Inc., "Description of Services," 0014810.

[37] Tony Hill, former State Representative, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 373.

[38] Tony Hill Testimony, Tallahassee Verified Transcript, Jan 11, 2001, p. 373.

[39] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 289-290.

[40] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 56.

[41] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 56.

[42] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 56.

[43] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 56. *See* Harry Sawyer, supervisor of elections for Monroe County, Response to Commission's Interrogatory #14, Apr. 13, 2001 (Mr. Sawyer responded that the Division of Elections or the state of Florida did not provide any guidance or funding for voter education in Monroe County).

[44] Ion Sancho, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 17-18. Mr. Sancho opined that not only do new voters require voting education, but also voters inexperienced with a voting system new to the jurisdiction.

I don't think there was any conscious targeting or racial discrimination on the part of supervisors. I think some of the effects of not having the kinds of monies necessary to do ongoing voter education programs has the effect of in fact impacting on minorities and young people and senior citizens because this was an election that brought out voters that voted maybe only one time in the last 10 years.

Ibid., p. 52-54. (Mr. Sancho commended the NAACP for its $7 million dollar voter participation campaign, but stated voter participation is not the responsibility of advocacy groups. He indicated that states and counties must merge to be the predominate leaders in the area of voter education and participation).

[45] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 17-18. *See* Fla. Stat. ch . 98.255 (1999). "Each supervisor of elections is authorized to provide voter educational programs and materials of a nonpartisan nature in his or her county as he or she may deem appropriate." *Id.*

[46] Jim Smith Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 165. *See also* The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), pp. 95-96. (A more extensive discussion of this Act is found in the Epilogue chapter of this report). The Act uses factors such as, the population size and number of voting precincts in each county to determine budget appropriations for local voting systems, voter education programs, and poll worker recruitment and training initiatives. Accordingly, for the purposes of this discussion, the Commission assumes that these factors were previously employed to appropriate counties' budgets to determine allegations for elections purposes.

[47] Denny Hutchinson, former supervisor of elections for Gadsden County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 104.

[48] Howell and Sancho Testimonies, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 105-106.

[49] Jim Smith Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 159.

[50] Harry Sawyer, supervisor of elections for Monroe County, Response to Commission's Interrogatory #17, Apr. 13, 2001. "At the present time we do not have a mechanism to challenge Monroe County['s] refusal of a submitted budget from the supervisor of elections office]. We are working on a bill that would provide for such a challenge." Ibid.

[51] Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 279-80.

[52] Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 270-71.

[53] Miriam M. Oliphant Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 286-88. *See* John E. Rodstrom, chairman of the Broward County Board of County Commissioners, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 278-79 (Mr. Rodstrom described how the board will be working with the supervisor of elections office for Broward County to address those concerns that arose during the November 2000 presidential election). *See also* United States Commission on Civil Rights, Interview Report, Telephone Interview with John E. Rodstrom, chairman of the Broward County Board of County Commissioners, Jan 30, 2001, p. 2 (Mr. Rodstrom indicated that the board usually "rubber stamps" the Broward County supervisor of elections office's budget proposals).

[54] Roger J. Desjarlais, county administrator for Broward County Board of County Commissioners, Letter to Miriam M. Oliphant, Mar. 13, 2001; Miriam M. Oliphant, supervisor of elections for Broward County, Memorandum to Roger J. Desjarlais, Mar. 22, 2001.

[55] Roger J. Desjarlais, county administrator for Broward County Board of County Commissioners, Letter to Miriam M. Oliphant, Mar. 13, 2001.

If the economy cools even more than anticipated or the State or Federal governments cut funding to counties or force additional unfounded mandates, we will undoubtedly need to look for reductions in our base budget[,] which is why I am asking all tax supported agencies to prepare five percent reduction plans to accompany the budget submission.

Ibid.

[56] Miriam M. Oliphant, supervisor of elections for Broward County, Memorandum to Roger J. Desjarlais, Mar. 22, 2001.

[57] Miriam M. Oliphant, supervisor of elections for Broward County, Memorandum to Roger J. Desjarlais, Mar. 22, 2001. *See* discussion in the Epilogue chapter of this report, for a more detailed analysis of current state legislation.

[58] *See* Harry Sawyer, supervisor of elections for Monroe County, Response to Commission's Interrogatory #17, Apr. 13, 2001.

[59] Fla. Stat. ch. 129.201(1) (2000).

[60] Fla. Stat. ch. 129.202(2) (2000) (emphasis added).

[61] *See* Harry Sawyer, supervisor of elections for Monroe County, Response to Commission's Interrogatory #17, Apr. 13, 2001.

[62] Harry Sawyer, Resp. to Interrog. #17.

[63] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 247.

[64] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 243.

[65] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 247.

[66] Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 243.

[67] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 34.

[68] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 34.

[69]Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 34. Mr. Sancho testified that he "personally raised money from teachers, lawyers and other individuals of Leon County so that Leon County could spend a radio and television advertising budget that was totally separate from what the county [allotted] because the county did not provide much in that area…." Ibid., pp. 34-35.

[70] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001 pp. 34-35. These funds were allocated to a separate voter education advertising budget. *See* ibid., pp. 57-58.

The former Secretary of State Jim Smith contacted the Florida Association of Broadcasters…and they did free 30-second television spots that were distributed to the supervisor of elections office, so the supervisors could put 30-second television spots on the television to provide information and motivational information to the voters on voting. That was in 1992. We used some of those same spots in 1994, but no secretary of state after that has provided any resources like that to the Florida Association of supervisor of elections or elections in general.

Ibid.

[71] Denny Hutchinson Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 22.

[72] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 19.

[73] Shirley Knight, supervisor of elections for Gadsden County, Testimony, Jan. 12, 2001, Tallahassee Verified Transcript, Jan. 12, 2001, p. 28.

[74] *See* Marvin Rickles, Jr., (Deputy) poll worker - Precinct 74B in Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 127, 133-134. Mr. Rickles testified that certain poll workers attend three yearly two-hour training classes. Poll workers were given no special preparation for an anticipated large voter turn-out on Election Day. He stated, "[t]hey merely go over the book, tell you…the duties of the deputy, and that's the extent of it." Ibid.

[75] Teresa LePore Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 375.

[76] Teresa LePore Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 376.

[77] Bob Poe, Democratic National Party, "Voting Problems List," 0000465, Affidavit of Marvin J. Rickles, Jr., Precinct Deputy in Precincts #74B and #74G in Palm Beach County (Other problems included: the number of poll workers and the adequacy of their training, access to bilingual poll workers, and the availability of ballots in non English languages).

On November 7, 2000, I observed many people leaving the two precincts who were denied the right to vote because the precinct clerks could not reach the supervisor of elections to confirm their voter eligibility. Throughout the day, many individuals who were not allowed to vote told me that the clerk could not reach the supervisor of elections because the telephone lines were continuously busy. I personally counted seventeen individuals in a two-hour period during the afternoon who told me they were not allowed to vote because the clerk could not reach the supervisor of elections. Many of these individuals were angry.

Ibid.

[78] Poll workers Panel, Miami Verified Transcript, p. 157 (A panel of poll workers who testified before the Commission agreed it was harder to get through to supervisors of elections in this election than in the past); Angenora Ramsey, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 96.(One poll worker testified that it took her three hours to get through to the Palm Beach County Supervisor of Elections Office, which was unprecedented in her 16 years as a poll worker).

[79] Barbara Phoele, poll worker-Precinct 6C in Broward County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 125, 136.

[80] Marilyn Nelson, poll worker-Precinct 232 in Miami-Dade County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 129-30.

[81] Marilyn Nelson Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 140.

[82] Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 63; Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 63; Maria DeSoto, Palm Beach County poll worker, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 144 ("MR. FOREMAN [to Ms. DeSoto]: "[I]f I come to your precinct, I'm not on your precinct roll, but you cannot reach the supervisors of elections, can I vote by affidavit?" MS. DESOTO: No."") Ibid.

[83] Maria DeSoto Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 136, 142 (Ms. Desoto noted that she was only able to get through to the supervisor of elections two or three times despite her numerous attempts); Barbara Phoele Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 136 (Likewise, Ms. Phoele stated that she was aware of 40-50, mostly African Americans and Hispanics, who were frustrated with long lines and left).

[84] David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 324.

[85] David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 324 (Mr. Leahy explained that the Miami-Dade County Supervisor of Elections Office receives the most inquiries from those precincts in areas in which the population is growing, as determined by the number of new residents).

[86] United States Commission on Civil Rights, Interview Report, Telephone Interviews with David Leahy, Miami-Dade County supervisor of elections, Feb. 1, and Feb. 5, 2001.

[87] David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 324.

[88] Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 296-97.

[89] Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 297 (Ms. Carroll noted that these individuals were not the same workers who were routinely employed by her office).

Chapter Five

The Reality of List Maintenance

We wanted these lists to be fairly broad and encompassing. It was never intended to be a cure all. [1]

Rigid sentencing guidelines and voter removal requirements for reformed offenders have been linked to the "War on Crime" in America. The result, however, of implementing these initiatives make convicted criminal offenders the only class of mentally competent Americans disenfranchised or separated from the right to vote.[2] Advocates of stricter punishment of particular crimes, however, seldom acknowledge the diverse manner in which people of color receive more frequent convictions and harsher sentences than their white counterparts. Thus, the disenfranchisement [3] of this class of citizens is sometimes overlooked in debates about the electoral process.

Since the Reconstruction Era following the Civil War, conviction of certain types of crimes supposedly committed more often by African Americans than other ethnic groups, resulted in their disenfranchisement.[4] During the Reconstruction Era, South Carolina, for example, cited the following as crimes "to which [the Negro] was especially prone": theft, arson, attempted rape, adultery, "wife beating," and "housebreaking."[5] Crimes equally or more likely to be committed by whites, such as murder and fighting, generally did not result in disenfranchisement.[6] The long-term effects of the disparity in consequences for alleged criminal behavior between races of people still ripples throughout the United States. Around 3.9 million Americans are disenfranchised.[7] Thirteen percent of African American men are disenfranchised[8] and account for over 36 percent of the total disenfranchised population.[9]

The state of Florida is one of 10 states that permanently disenfranchises former felons or felons who have satisfied all sentencing requirements.[10] Florida Justice Institute Staff Attorney JoNel Newman testified that Florida leads the nation in disenfranchising felons and in prosecuting children as felons.[11] Over 31 percent of the disenfranchised population in Florida are African American men.[12] Of all the disenfranchised former felons in the United States, one-third are found within the borders of the state of Florida.[13] As discussed in Chapter One, people of color, particularly African Americans, have a greater likelihood of appearing on the Florida felon exclusion list. Moreover, *African Americans have a better chance of erroneously appearing on the Florida felon exclusion list* . For example, in Miami-Dade County, over half of the African Americans who appealed from the Florida felon exclusion list were successfully reinstated to the voter rolls.[14]

One commentator calls the disenfranchisement of voters a "stark reality" that

> necessarily depletes a minority community's voting strength over time by consistently placing a greater proportion of minority than majority voters under a voting disability at any given time. For this reason, the effects of the intentional discrimination that originally motivated felon disenfranchisement still linger.[15]

Former United States Supreme Court Justice Thurgood Marshall, opined that disenfranchisement

> doubtless has been brought forward into modern statutes without fully realizing the effect of its literal significance or the extent of its infringement upon the spirit of our system of government.[16]

Chapter Three of this report discussed the statutory provisions regarding list maintenance and demonstrated how these provisions on their face could disenfranchise voters. These concerns are not, however hypothetical. In the November 7, 2000, elections voters lost their rights because of these provisions and how they were implemented. This Chapter will provide further details on how the list maintenance law was implemented and its practical effect on Florida voters.

HOW THE STATE OF FLORIDA CONTRACTED FOR LIST MAINTENANCE

The statutory requirement to hire a private agency to assist in purging the voter files was enacted after the 1997 Miami mayoral election elicited a high incidence of voter fraud that included votes cast in the names of deceased persons. At the Commission's hearing in Tallahassee, L. Clayton Roberts, director of the Division of Elections, described the history of Chapter 98.0975 of the Florida statutes:

> This section of the statute was passed in response to a 1997 Miami mayoral election where it was challenged in court and went up through the court system in the State of Florida. The gentleman who originally won that mayor's race was turned out of office. There was a grand jury investigation. There was a Senate Select Committee appointed to investigate that election. There was [an] allegation and it was eventually proven that a large number of

> people who were deceased cast ballots—well, someone cast ballots in the name of some people who were deceased in that election. People who were convicted felons who had lost their right to vote under the Florida Constitution cast ballots in that election and people who were also registered in another municipality or another county within that area cast ballots in the City of Miami mayor's race.[17]

George Bruder, a vice president for DBT Online, a ChoicePoint Company, provided sworn testimony to the Commission about key elements of Florida's list maintenance activities and responsibilities prior to the November 2000 presidential election. Taking into account that he represented the private firm that was awarded a contract to perform state-sponsored, list maintenance tasks before the election, Mr. Bruder's testimony offered a fuzzy snapshot of the reality of list maintenance activities in Florida. His testimony included a description of the process that led to the Division of Elections awarding the contract to his company.[18]

According to this description, the Division of Elections initially solicited private entities to bid for its list maintenance contract through requests for proposals. The first request resulted in an award to a private firm named Professional Analytical Systems & Services.[19] Following its award of a contract to Professional Analytical Systems & Services, the Division of Elections, for reasons not evident in the record, submitted a second request for proposal.[20] Next, the Division of Elections extended an invitation to negotiate to a Florida company then known as Database Technologies, Inc. and to Computer Business Services, a Georgia company.[21]

In response to the Division of Elections second Request for Proposal, Database Technologies, Inc. bid around $3.1 million, an amount nearly 100 times higher than its first bid. DBT structured its bid, this time, in three different price levels based on the advice of "a little bird."[22] The company asserts that this substantial increase reflects the change in scope of work requiring "additional data processing expertise."[23]

> What we brought to the table is the ability to . . . [take] different types of data from different types of platforms and being able to draw answers out of them that are useful.[24]

At the time Database Technologies, Inc. was ultimately awarded the contract, the company also had a contract with the Florida Department of Law Enforcement.[25] The contract provided the Florida Department of Law Enforcement access to databases held by Database Technologies, Inc.[26]

DBT Online, A ChoicePoint Company

After Database Technologies, Inc. was awarded the Division of Elections' list maintenance contract, it merged with ChoicePoint, Inc. and changed its name to DBT Online, a ChoicePoint Company. ChoicePoint and DBT Online issued a February 14, 2000 press release announcing the agreed upon merger of the two companies.[27] The majority of DBT Online's efforts for the list maintenance contract were completed at the time the press release was issued. On May 16, 2000, ChoicePoint and DBT Online shareholders agreed to approve the merger of the two companies.[28] As a result, several DBT Board members were appointed to ChoicePoint's board of directors.[29]

CONTRACTUAL PROVISIONS

The Division of Elections instructed DBT Online on the information it was to use in the data processing/data matching procedure.[30] Mr. Bruder maintained that the "color blind" search criteria used to create a list of voters with a potential problem included name, date of birth and social security number.[31] He claimed that neither race nor party affiliation was used to create the list.[32] But when Mr. Bruder was questioned regarding a June 9, 2000, letter, in which he informed the supervisors of elections that race and gender *had been* used as matching criteria, Mr. Bruder testified that he had misinformed the supervisors of elections. [33] Mr. Bruder testified that he did not understand the contract to dictate that race, gender and social security numbers were to be used as matching criteria for the felon list.[34] The Division of Elections gave DBT Online a "Requirements Document" that prescribed last name, first name and date of birth as matching criteria for the felon list.[35]

To date, there has been no evidence that DBT Online made any further efforts to advise county or state officials that the information in the June 9, 2000, letter was erroneous. Mr. Bruder asserted that DBT Online would have to

> fully investigated where the letter went. I believe this was transmitted to the Division of Elections and I don't know if it was communicated out to the Supervisors; however, I have not had that discussion with the people at the Division because this would have been sent to Bucky Mitchell.[36]

Mr. Bruder was referring to Emmett "Bucky" Mitchell, former assistant general counsel for the Division of Elections. Mr. Mitchell is no longer employed with the Division of Elections.[37]

Although Mr. Bruder did not address the supervisors of elections regarding the content of his June 9, 2000, letter, he offered his views on the letter's content with the Commission. In a letter dated March 16, 2001, to Commission Chairperson Mary Frances Berry, Mr. Bruder admits that the sentence regarding the use of race and gender was "inartfully drafted" and may have confused the supervisors of elections.[38] Mr. Bruder stated:

> What I was trying to convey was that, while race and gender were a part of the database that we received and returned to the Division of Elections, neither were used as matching criteria. As I reiterated at the hearing, DBT's function was simply to provide the data. We had neither the statutory nor the contractual right to remove a single voter from the registration lists. That was the function of the County supervisors of elections.[39]

Contract Scope and Databases

Persons adjudicated mentally incapacitated with respect to voting must be excluded from the voting lists according to Florida election law.[40] Mr. Bruder stated, however, that the contract did not require DBT Online to include such data in its list.[41] The Division of Elections provided DBT Online with the following databases in order to create the exclusion lists: the Central Voter File, the Florida Department of Law Enforcement file, the Bureau of Vital Statistics deceased file, and the Executive Board of Clemency file.[42] As dictated by the terms of the contract and the Division of Elections, DBT Online was expected to

> Take the files that [the Division of Elections] gave us, take the process that they specified to us, develop a list, an exceptions list completely separate from the central voter file, provide that back to the Division of Elections, who would then take that list, disseminate it to the supervisors of elections, who would then take their individual list and do the verification process of the names on it.[43]

One of the files provided by the Division of Elections to DBT Online was a copy of the Department of Highway Safety and Motor Vehicles (DHSMV) database.[44] Once the data have been copied from the DHSMV database, it no longer has any control over the integrity of the data contained therein.[45] Thus, DBT Online does not have the access to manipulate the "live" DHSMV database. Under the name of DBT Online's predecessor, Equifax, the DHSMV entered into the agreement to provide copies of its database on February 10, 1993.[46] On August 1, 1997, the contract was assigned to [ChoicePoint] and remains in effect.[47]

On November 5, 1993, DBT Online contracted for "interactive access to the driver's license database" for their "corporate/professional licensed clients."[48] Randolph A. Esser, Information Systems director for the DHSMV, defined "interactive access" as "rapid two-way communications between an end user and a computer program. In this context, the end user will submit a driver's license number(s) to the Department's computer system and receive the information corresponding to that driver's license number within a few seconds."[49] Then, DBT Online determines which clients shall have interactive access to the driver license database with no "input from, or explanation to" the DHSMV.[50] Each company with authority access has its own password and other identification. All requests to enter the driver license database are automatically logged by the computer system for later billing purposes.[51]

The driver license database contains the following personal identifiers: driver's license number, full name, address, gender, race, and birth date.[52]

Simplified Verification of Accuracy

Mr. Bruder explained that DBT Online hired a statistician "to build a model that would tell us how many records we would need to manually verify to give us a level of accuracy on the process . . . that was developed per the direction of the Division of Elections.[53] DBT Online conducted its own assessment of the percentage by which, if any, its methodology failed to identify voters who had duplicate registrations, were convicted as felons without civil rights restoration or were deceased. In a letter to Emmett "Bucky" Mitchell, former Division of Elections assistant general counsel, dated March 22, 1999, DBT Online reported that its statistician found that it margin of error were less than 0.4 percent.[54] DBT Online randomly selected 6,760 records to be manually verified to determine its percentage of errors. Because this method found five errors, the statistician reported the confidence level at 99.9 percent.[55] DBT attributed the errors to its previous failure to increase the character count to capture hyphenated last names and the "multiple first name formatting errors" created in the merging of the county information into the Central Voter File.[56] Mr. Bruder claimed that he was unaware of any other efforts having been made to verify data on the list.[57]

Accuracy of the Felon Exclusion List

Mr. Roberts testified that a list of 3,993 possible felons was compiled by DBT Online and sent to the 67 supervisors of elections.[58] Janet Modrow, technical assistant for the Division of Elections clarified the number provided by Mr. Roberts. Ultimately, DBT Online provided a list of 3,993 possible felons from its own databases and 38,329 possible felons based on the databases provided by the state of Florida.[59] Mr. Bruder stated that the list created was not inaccurate, but rather, it contained "false positives." He explained:

> A false positive is an industry term that means some but not all the data elements match the data provided. The fact that there were names on the list that were not ultimately verified as deceased, registered in more than one place, or convicted felons does not mean the list was inaccurate, but reflects the nature of the search parameters established by the Division of Elections. [60]

DBT Online advised the Division of Elections of the likelihood that a significant number of false positives existed and made recommendations to reduce those numbers, according to Mr. Bruder.[61] He further asserted that DBT Online specifically suggested to state officials that narrow criteria be used in creating the lists, which would lower the false-positive rate, and therefore, minimize errors in the number of names matched.[62] Mr. Bruder testified that the company recommended, for example, that they could develop criteria requiring an exact match on the first and middle names. Thus, a Floridian named Deborah Ann would not match with the name Ann Deborah.[63] But the Division of Elections favored more inclusive criteria and chose to "make it go both ways," as Mr. Bruder recalls it.[64] In addition, he pointed out, state officials set parameters that required a 90 percent match in the last name, rather than an exact match.[65] Mr. Bruder insisted that "the State dictated to us that they wanted to go broader and we did it in the fashion that they requested."[66]

Mr. Roberts also testified that the Division of Elections contacted the Florida State Association of Supervisors of Elections regarding the contract:

> [The Association of Supervisors of Elections] established a committee on this issue. We got the committee together with people from [the Florida Department of Law Enforcement], with people from the Board of Executive Clemency, with DBT [Database Technology, Inc.]. We got together to come up with a framework and a methodology that the Supervisors could go through in verifying this information, to go through in a methodical way

> to verify before anyone's name was removed from the voter rolls.[67]

Mr. Bruder disagrees with the above characterization of the meeting. At a deposition taken of Mr. Bruder,[68] he recalled a meeting with the Division of Elections and the Executive Board of the Florida State Association of Supervisors of Elections[69] in early 1999.[70] At the meeting, the Executive Board members of the Florida State Association of Supervisors of Elections gave DBT Online its input "as far as what they wanted and our being able to tell them what we could and could not do in response to that."[71] Mr. Bruder recalled that the supervisors of elections present at that meeting wanted

> to be as exacting as possible on the matches. If I condense it down to a major concern, that was what they were looking for.
>
> And being that the Division of Elections was the entity that I was contracting with, [yes], they would be the ones that would be giving us the specifications. So they [Division of Elections] were there, they heard what the Supervisors [of Elections] wanted. They had technical representation there also to then give us advice as far as how they wanted us to construct the matching logic.[72]

Instead of providing an exclusion list with exact matches, the state decided to proceed with requiring the matching logic to "go both ways," according to Mr. Bruder, who insisted that DBT Online "continued processing at the direction of the Division of Elections."[73] DBT Online made no recommendations or instructions on how the supervisors of elections should implement their verification process.[74] Assistant General Counsel Mitchell reiterated to DBT Online the desire of the Division of Elections to cast a wide net for the exclusion lists. Mr. Mitchell said:

> Obviously, we want to capture more names that possibly aren't matches and let the supervisors make a final determination rather than exclude(d) certain matches altogether.[75]

Mr. Bruder also testified that he did not believe that all the supervisors of elections understood the matching logic employed by DBT Online at the direction of the Division of Elections.[76] Mr. Bruder believed that the supervisors of elections had a "lack of understanding of the methodologies used to derive the list."[77] In June 1999, DBT Online attended a meeting with the Division of Elections and all 67 supervisors of elections.[78] During that meeting, Mr. Bruder addressed questions regarding specific incidents posed by the supervisors of elections.[79] As a result of the June 1999 meeting, Mr. Bruder recalled that he advised that the supervisors of elections receive individual training on the matching logic.[80] Mr. Bruder elaborated:

> Subsequent to that meeting, immediately thereafter I walked out of that meeting with Emmett Mitchell and told him that my suggestion to the Division of Elections was that we begin an immediate training program, to go to each and every Supervisor to explain to them the logic that was used and why and to help them with whatever issues they had in doing their part of the verification.
>
> Subsequent to that discussion we did five regional trainings that DBT orchestrated with the Division of Elections and the Florida Department of Law Enforcement in which we invited all counties to bring whoever their representatives were, either the Supervisor of their designee, multiple people, and we built training materials for them. We sat with them and answered their questions.[81]

Mr. Bruder testified that he also made a similar suggestion earlier in the data matching process:

> I originally expressed to the Division of Elections early on in the process before we started doing any data processing, that there would probably be a need for training the eventual users of this data because it was a complex data processing job, and allow us to do that because we had trainers that understood that. I again suggested it after that [June 1999] meeting and DBT did that and we did it at no additional expense to the State.[82]

Division of Election Payments and Contract Status

The amount paid to DBT Online for its performance of the contract with the Division of Elections was $3,221,800.[83] DBT offered vague testimony about the actual costs of the services rendered under the contract, insisting that the payment encompassed hours of work, in addition to its "intellectual property, existing databases, and [our] experience."[84] The Division of Elections, in addition to paying over $3 million to DBT Online, compensated the Florida Department of Law Enforcement for its role in the removal of felons from the voter rolls. The Florida Department of Law Enforcement performed record checks on a listing of 13,190 of alleged felons in December of 1999.[85] At a cost of $8 per record, the Division of Elections received an invoice for a total of $105,520 the Florida Department of Law Enforcement.[86]

The list maintenance contract between DBT Online and the Division of Elections has expired and it will not be renewed.[87]

CONVICTED FELONS AND CLEMENCY STATUS

The list maintenance contract originally stated that only Florida felony convictions would be used to create an exceptions list. Subsequently, George Bruder understood that the convicted felon and clemency status parameters were expanded to include other states when the Division of Elections discovered "that [DBT Online] had databases of other felony convictions and they asked us to include some of those states in the first year in the processing."[88] Mr. Bruder could not remember which states were included in the databases with felony convictions outside of the state of Florida at the time of the hearing.[89]

Based on a review of the documents submitted to the Commission, DBT Online used its access to felony conviction data from the following states for its contract with the Division of Elections: Florida, Texas, Ohio, Wisconsin, South Carolina, Kentucky, New Jersey, Virginia, Washington, Connecticut, and Illinois.[90] Following the instructions DBT Online received from the Division of Elections, felons convicted in the following states, which have automatic restoration of civil rights, must apply for clemency through the Florida Executive Board of Clemency: Texas, Connecticut, South Carolina, Illinois and Wisconsin.[91] The following states, which do not have automatic civil rights restoration for felons, required the foregoing verification process described by Mr. Bruder: New Jersey, Connecticut, Virginia, Washington and Ohio.[92] The states which were "reciprocal" for clemency were: Kentucky, New Jersey, Virginia and Washington.[93]

Mr. Bruder asserts that DBT Online did, however, make a recommendation as to which states should be added to the felon and clemency exclusion lists. He explained:

> Clemency from those states that had a similar clemency process as the State of Florida, we identified that and we provided that information to the Division [of Elections]. And those states that did not have a similar clemency process, we identified that and provided that information to the State . . .[94]

The clemency status of those listed as convicted felons was matched against the Florida Executive Board of Clemency file and similar Boards of Clemency in other states.[95]

Automatic Restoration of Civil Rights

DBT Online performed the following procedures when dealing with felons from states providing automatic restoration of civil rights:

- Verified that information with the Executive Board of Clemency in the state where the felon was convicted, if one existed.[96]
- If no Executive Board of Clemency existed in the other state, then DBT Online "ran them solely against the Florida Executive Board of Clemency file."[97]
- If the state where the felon was convicted had an Executive Board of Clemency and a "repository type of agreement [existed] between that state and Florida to reinstate those civil rights, we checked with those Boards of Clemency to verify that [the] individual had been granted that right."[98]

Assistant General Counsel Emmett B. Mitchell, instructed DBT Online that felons from states with no Executive Board of Clemency must apply for clemency in Florida to have their voting rights reinstated.[99] This interpretation of the Executive Clemency laws further compounds the disenfranchisement of African American voters. Also, it does not assess the interpretation of comparable statutes which require Florida's acceptance of a sister state's restoration of civil rights conferred upon a convicted felon. Although the issue of voting rights was not specifically addressed, two Florida Courts of Appeal have ruled that if an individual enters Florida with his or her civil rights, then through the full faith and credit clause[100] of the United States Constitution, (s)he need not apply for clemency upon arriving in Florida.[101]

Mr. Bruder claimed that DBT Online "relied upon the information that was given to us by the Division of Elections who was giving us the criteria in which to use to do the data processing."[102]

Executive Clemency in Florida

The Constitution of the state of Florida empowers the governor to restore civil rights to those convicted of crimes, other than treason, with the approval of three members of the governor's cabinet.[103] Members of the governor's cabinet consist of the following: secretary of state, attorney general, a comptroller, a treasurer, commissioner of agriculture and commissioner of education.[104] Although the Cabinet meets twice a month for 11 months each year,[105] they only meet as a Clemency Board on a quarterly basis.[106] During the months of May, June, and July 2000, the Cabinet met six times, but only as a Clemency Board once.[107]

The Department of Corrections is obligated to not only inform inmates and offenders under community supervision about civil rights restoration, but also assist them in completing the clemency application.[108] The information that may be required to be filed with the clemency application includes: certified copy of the applicant's indictment or information, judgment adjudicating the applicant as guilty, and the sentence (if imposed).[109] Applicants for clemency in the state of Florida must also send a copy of their application to the current chief judge and current prosecuting attorney of the court in which (s)he was convicted.[110] The clemency application, excluding the required attachments, is one page and requires the applicant to state a reason for consideration. The clemency application also requires applicants who were found guilty of a felony outside the state of Florida to complete the same application as those adjudicated in Florida.[111]

Seven days after the Commission hearing in Miami, where the policy of requiring out-of-state felons with restored civil rights to apply for Florida clemency was called into question, the Office of Executive Clemency sent a letter addressing the issue. In a letter to Ed Kast, assistant director of the Division of Elections, Janet H. Keels, coordinator for the Office of Executive Clemency write in pertinent part:

> If a former felon's civil rights were restored in another state, or if a person's civil rights were never lost after being convicted of a felony in another state, the individual possessed his or her civil rights in Florida and need not apply for restoration of civil rights in Florida. If a former felon attempting to register to vote in Florida claims that his or her civil rights were restored in another state or that his or her civil rights were not lost in another state, but the individual cannot produce supporting documentation, please refer that individual to my office.

> My office will attempt to confirm the individual's claim by contacting the state that assertedly restored the individual's civil rights. If possession of civil rights is confirmed, the individual does not need to apply for restoration of civil rights in Florida.[112]

Ms. Keels, in the above referenced letter, then requested that the Division of Elections accept a letter from her office confirming the individual's possession of civil rights as sufficient proof to allow the former felon to vote.[113] Director of the Division of Elections and all supervisors of elections were copied on the letter.[114]

Although Ms. Keels insists that her letter merely reiterated the Office of Executive Clemency policy, other mandates suggest that the letter actually changed it. Rule 9 states that felons "convicted in a court other than a Florida court" must be a legal Florida resident before requesting civil rights restoration.[115] Rule 9D states that persons convicted in out of state or federal courts *must* apply for civil rights restoration.[116]

State Senator Daryl Jones, a member of the Governor's Select Task Force on Election Reform in Florida,[117] noted that the clemency process is extremely difficult in Florida.

> [I]n order to have any chance of getting through it, and it does require today a full-blown hearing in front of the full Cabinet, with not only you but your employer, your family, your pastor, and all kinds of people. This is about a $10,000 effort for the average person. And what that means is that for the—the largest number, by far, of people who are former felons in Florida—and probably in the country—are poor people. And so this . . . is not an option. It has essentially barred the process from those people.[118]

Number of Felons and Out of State Clemency Verification

The first list DBT Online provided to the Division of Elections in April 2000 contained the names of 181,157 possible duplicate registrants, deceased persons and felons without civil rights restoration.[119] Approximately 65,776 of those included on the first list were identified as felons.[120] In May 2000, DBT discovered that approximately 8,000 names were erroneously placed on the exclusion list.[121] Later in the month, DBT Online provided a revised list to the Division of Elections containing a total of 173,127 possible duplicate registrants, deceased persons and felons without civil rights restoration.[122] Of those included on the "corrected list," 57,746 were identified as felons.[123]

The documents received by the Commission from DBT Online indicate that the process for clemency verification for purported felons convicted in a court other than a Florida state court consisted of faxing a list of possible felons to the appropriate state agency. For example, the following state agencies responded to DBT Online's clemency inquiries:

1. State of Washington Department of Corrections[124]
2. Kentucky Secretary of State's Office[125]
3. New Jersey Extradition Secretary, Office of the Governor[126]
4. Virginia Secretary of State's Office[127]

DATA VERIFICATION

Although Florida election law requires that the supervisors of elections, who received the exclusion lists compiled by DBT Online, attempt to verify the accuracy of those lists,[128] it appears that this procedure was not followed with any degree of uniformity. At least one election official predicted and planned provisions for voters who arrived at the polls and discovered that their names were removed from the voter rolls. Then director of the Division of Elections, Ethel Baxter, issued the first of a series of memos regarding the list maintenance activities performed by the supervisors of elections on August 11, 1998. At that time, Ms. Baxter discussed the Central Voter File as their "first experience with a statewide database" and that it "cannot be a 100 percent accurate list."[129] Ms. Baxter made particular note of the concerns with the felony information in the Central Voter File because of the potential use of aliases. As a result, Ms. Baxter recommended that the supervisors of elections "exercise caution when deciding to remove someone who shows up as a convicted felon on the [Central Voter File]."[130] Ms. Baxter also advised the supervisors of elections of the following:

> If you have doubts as to whether or not the felony information is accurate or are unable to verify the accuracy of the information, we recommend that affected persons execute the affidavit prescribed in section 101.49.[131]

In a memorandum dated August 14, 1998, Ms. Baxter forwarded the first exclusion list to the supervisors of elections. Ms. Baxter repeated the same advice to allow alleged felons to vote under the affidavit prescribed section 101.49 of the Florida statutes if the supervisor of elections is unable to verify the accuracy of the information.[132] The use of affidavit voting under these circumstances provides a reasonable opportunity within the law for eligible persons to participate in the electoral process when election officials are unable to resolve routine conflicts generated by the government's inefficiency or error. Ms. Baxter specifically advised:

> It is your responsibility to attempt to verify the accuracy of the information on the list, and remove, prior to the next election, any person who is deceased, convicted of a felony, or mentally incapacitated with respect to voting. If you have doubts as to whether or not the felony information is accurate or are unable to verify the accuracy of the information, we recommend that affected persons execute the affidavit prescribed in section 101.49, Florida statutes. *In short, if there is reasonable doubt as to the accuracy of the information, you should allow a person to vote.* [133]

In a follow-up memorandum dated August 18, 1998, Ms. Baxter recommended that the supervisors of elections "proceed with caution" while verifying the information on the exclusion list she forwarded just days prior.[134] Ms. Baxter advised the supervisor of elections as follows:

> When notifying voters of potential problems with their registration you should refrain from being accusatory keeping in mind that the information in the list may contain some inaccuracies and is not completely foolproof.[135]

Ms. Baxter also suggested that the supervisors of elections contact the Office of Executive Clemency to identify persons who appear on the exclusion list, but have had their civil rights restored.[136]

Two days later, Ms. Baxter issued another memorandum to the supervisors of elections regarding their list maintenance activities. This August 20, 1998, memorandum states, in pertinent part:

> As a follow up to our August 11, August 14 and August 18 memorandums regarding the central voter file, we again want to emphasize the importance of verification of the names of the voters on the list provided for your county, who are . . . convicted felons…. As we cautioned in our previous memos, we are again recommending that you confirm this information prior to removing any names from the registration rolls.[137]

In the August 20, 1998, memorandum, Ms. Baxter, for a third time, advised the supervisors of elections to allow alleged felons to vote through the affidavit in section 101.49 of the Florida statutes if (s)he had "doubts as to whether or not the felon information is accurate, or [the supervisors of elections were] unable to verify the accuracy of this information...."[138]

It appears that Ms. Baxter, through her memoranda, attempted to urge the supervisors of elections to exercise great caution in performing their list maintenance responsibilities. She specifically attempted to alert election officials of the looming possibilities of eligible Floridians being wrongfully denied the right to vote if these officials failed to confirm the information compiled by DBT Online. In contrast, state officials apparently failed to issue similar warnings concerning the probable risk of the state mistakenly denying a legitimate voter the opportunity to participate in the November 7, 2000, election. The complaints from the supervisors of elections and from Floridians in the aftermath of the election illustrate that indifferent attitudes and careless practices prevailed over the more refined and cautious approach to the protection of voting rights that was advocated by Ms. Baxter.

Supervisors of Elections Exclusion List Verification Methodologies

In his testimony before the Governor's Select Task Force on Election Reform in Tallahassee, L. Clayton Roberts explained that there was no clear statutory guideline on that manner in which the supervisors of elections were expected to verify the information supplied by DBT Online, and as a result, each county supervisor established his or her own policy. [139] The lack of uniformity among the counties regarding each county's felon list verification process is evidenced in the letters drafted by Miami-Dade Supervisor of Elections David Leahy and Leon County Supervisor of Elections Ion Sancho.[140] Mr. Leahy's form letter to alleged felons states in pertinent part:

> According to information received from the Florida Department of Law Enforcement, *you have a felony conviction* and have not had your civil rights restored. Therefore, your name will be removed from the voter registration rolls thirty (30) days from the date of this letter unless information is received that you have not been convicted of a felony or have had your civil rights restored.[141]

The Miami-Dade letter further instructed the alleged felon to complete a form and provides three different addresses to which (s)he may forward the information.[142] If an alleged felon had, indeed, been convicted of a felony and had not had his or her civil rights restored, then the letter instructs him or her to obtain a clemency application form from the Office of Executive Clemency and contact the Office of the supervisor of elections to obtain voter registration information once restoration has been granted.[143] While Mr. Leahy's letter appears to place confidence in the veracity of the DBT Online felon list, the Leon County form letter to alleged felons demonstrates an understanding of the lists' inclusion of "false positives." Mr. Sancho's form letter provides in pertinent part:

> Your name has been submitted to our office by the Florida Division of Elections on a list of voters who have allegedly been convicted of a felony, but not had their right to vote restored. *We do not know if this list is accurate.* Our office is required to remove you from the voter rolls if you have been convicted of a felony and your right to vote has not been restored.
>
> If you have never been convicted of a felony, we want to help you clear this up.[144]

The letter then instructed the alleged felon to fill out a form and return it to the supervisor of elections office within 30 days or be removed from the voter list.[145] The form requested the alleged felon to self-identify as one of the following: never convicted of a felony; convicted of a felony, but civil rights have been restored and eligible to vote; or convicted of a felony, but civil rights have not been restored.[146] While Mr. Sancho's letter suggests a partnership between his office and the alleged felon to "clear up" any confusion regarding his or her voting status, Mr. Leahy's letter is indicative of an alleged felon's requirement to prove his or her eligibility status. The simplicity of Mr. Sancho's letter may have even been preferred by DBT Online. When asked about the language used in Mr. Leahy's letter, Mr. Bruder responded:

> Are you asking me should he have drafted this letter to say "you possibly have a felon conviction and we're trying to verify that"?

> I would have wrote it that way.[147]

Patricia M. Hollarn, the 1998 president of the Florida State Association of Supervisors of Elections and, then, supervisor of elections for Okaloosa County supervisor of elections, drafted a letter to alleged felons which read, in pertinent part:

> We have received a list of convicted felons on which your name appears. This list was sent to us by the state and we have been informed it may contain errors. We are asking our voters whose names appear on the list to please assist us with verification so that we don't incorrectly remove any names from our rolls.[148]

Ms. Hollarn's letter, then, asks the recipient to identify him or herself in one of three categories. The first category is that the individual was convicted of a felony with his or her civil rights restored. The recipient is informed that his or her civil rights restoration status will be confirmed with the Office of Executive Clemency.[149] If the recipient self-identifies in the second category as a convicted felon without civil rights restoration, then Ms. Hollarn's office promises to assist in the paperwork.[150] The third category is that the individual has never been convicted of a felony. Ms. Hollarn offers an apology to this recipient.[151] Ms. Hollarn's letter indicates that a prepaid self-addressed envelope was enclosed with each of the letters.[152]

In a letter transmitted by facsimile to the Division of Elections from the Florida Department of Law Enforcement on August 14, 1998, the instruction on voter eligibility verification through fingerprints was clarified. A form provided by the Florida Department of Law Enforcement, required that both the supervisor of elections and the voter complete separate sections of the form requesting the voter's complete name, date of birth, gender, and social security number.[153] The voter must also authorize that the information be used to "confirm or deny a felony conviction" and be fingerprinted in the space provided on the form.[154]

The supervisors of elections were not required to report to the Division of Elections if they removed someone based on the possible felon list.[155] Once an individual was identified as a "possible" felon by DBT Online, the supervisors of elections sent a letter to the voter at his or her registration address.[156] Some supervisors sent their letters by certified mail, while others did not.[157] If the voter did not respond to the letter, some supervisors may have attempted to contact the voter again, while others did not.[158]

Mr. Roberts also acknowledged that "miscommunication" led to approximately 8,000 persons who committed misdemeanors in Texas being incorrectly identified as felons in Florida, and consequently, many of these voters were erroneously notified of their removal by county supervisors.[159] Mr. Roberts stated that he believed that the problem was addressed and that "no person was removed from the voter rollsbased on that erroneous information."[160]

County supervisors and other local officials noted their frustration with the election problems that resulted from the false positives on the felon list. Linda Howell, Madison County supervisor of elections, testified that she found the disenfranchisement of felons "most distressing."[161] On the other hand, elected African American officials asserted that by the time the error was caught, it was too late for the counties to correct it and that the first time any of these voters realized that they had been removed from the voter rolls was on Election Day.[162] Ms. Howell testified:

> There needs to be something done with the law with regard to a person being able to get their civil rights restored. It's a very different thing in Florida to have that done. Some people—it's been 20 years and they still haven't gotten their civil rights. Sometimes that is because—they don't even know they are supposed to do something. You have to apply to have your civil rights restored. If I applied today, it would take me from six months to a year to get them restored. So that is an area that has been very distressful for us in our county.[163]

Ms. Howell stated that the first list her office received from the Division of Elections was in 1998 and had no indication of the origin of the information.[164] Floridians who had been convicted of a misdemeanor with an adjudication withheld, or people who had received clemency or were pardoned, were included in the first Madison County list.[165] Ms. Howell recalled that one person on the list received a pardon in 1967.[166] Ms. Howell opined, "The first list was so inaccurate that you were almost afraid to do anything with it."[167]

Ms. Howell attempted to verify the names on the list by requesting felony conviction confirmation with the Madison County clerk's office and sending letters to the alleged felons on the list.[168] The letters sent to the alleged felons included a voter verification form that is sent to the Florida Department of Law Enforcement.[169] The Florida Department of Law Enforcement would then verify the felon status of the voter and send the alleged felon a letter including its determination. A fingerprint card to determine whether or not they are the same person listed as a felon would be sent along with the letter when appropriate.[170] The alleged felons to whom Ms. Howell sent letters had 30 days to respond.[171] Ms. Howell stated that she removed some names of people who appeared on that first list from the Madison County voter file.[172] Ms. Howell received a second list in June 2000, which had only two names, but she chose not to use that list.[173]

Even Ms. Howell, who is not a convicted felon[174], received an erroneous letter referencing a prior felony conviction from the Florida Department of Law Enforcement.[175] At the Commission hearing in Tallahassee, Ms. Howell recalled her response to receiving the letter:

> I had sent the letter to one of my voters and he sent in the verification form. Instead of picking up his name, they picked up my name and sent me the information. Now the thing that really upset me was that . . . they were not taking their job seriously. The law said that they had to verify this, but they were not taking it seriously. And, you know, that could destroy a person's life. You get that on your record, how do you get it off?[176]

Ms. Howell later learned that she was never on the felon list provided by the Division of Elections or the Florida Department of Law

Enforcement.[177]

Ms. Howell described the position of supervisors of elections with the felon list as "precarious."

> We have a law that says that a felon cannot be on your rolls, and if I remove that person, you know, from information that I've received and I've done it improperly, then I'm violating a person's right to vote. So where is the middle ground here, you know?

Ms. Howell recommended that there be a link between the Florida Department of Law Enforcement, the Florida Executive Board of Clemency, and the Florida Department of Corrections to improve the accuracy of the lists.[178]

Ion Sancho, Leon County supervisor of elections, recalled the process in his county:

> [T]he workers at the polling place are given a precinct register, a county-wide register, and in Leon County you have special numbers set aside that the public doesn't have access to so that we can communicate telephonically with the Election Day workers. An individual . . . would come in and present themselves to the precinct, they wouldn't be on the rolls. They would be sent to see the clerk, who is basically the CEO of the operation. That individual then would look in their countywide register to see if that individual is eligible anywhere to vote in Leon County. Failing to find your name there—and if you have been dropped as a felon, your name wouldn't be there—then that clerk would then call—be instructed—this is the way the procedure is supposed to work. They call the elections office and present the facts to a troubleshooter that we have in our office, who then would try to research the records in our office. And that's where this would have to be resolved because the list would be there.[179]

If the Leon County troubleshooter was unable to make a determination, then his or her supervisor, the assistant supervisor of elections, would make the decision.[180] Mr. Sancho explained:

> If the troubleshooter can't make a determination, then they would have to ask permission of their supervisor, who in our jurisdiction is the assistant supervisor of elections who is in charge of Election Day problems of all the Election Day problem workers, and it may different in other counties.
>
> And again, the person may have not been able to resolve the problem but then presented it to their direct supervisor, who made the decision to tell the person that they're given authorization to vote. Then the clerk would then write down on the precinct register that they were instructed by—and write down the name of the individual in our office that gave them the authorization to allow the person to vote and then the person would be required to just fill out a form, what we call the rule pages, which are any sort of trouble or problem and then fill those out and then vote.[181]

Former Broward County Supervisor of Elections Jane Carroll testified that she found the felon exclusion list to be inaccurate. As a result, Ms. Carroll chose not to use the felony exclusion lists provided to her office.

> COMMISSIONER EDLEY: I guess this is for Ms. Carroll.
>
> Did you have responsibility for verifying the correctness of the felony exclusion list?
>
> MS. CARROLL: Had we chosen to use that list that you're discussing, we would have attempted to verify it. We did with the previous list that came out, the first time that list came out, which was two years ago prior to the '98 elections. We wrote to everyone who was on the list and we didn't use the word felon in the letter for fear it would fall into someone else's hands and might be embarrassing. We said, "Your voting status has come under question from information we've received from the Secretary of State and would you please call us to discuss this.
>
> Most of them did call. We cleared it up. Either it was not accurate information or it was. If they didn't call we did not remove them.
>
> When the list came the next time there was a great deal of discussion among the supervisors as to the validity of the list. So we chose not to use it. So actually in Broward County no one was removed due to that second and third list. If you remember, there was a second list that was corrected later, according to testimony that I heard earlier.
>
> But when I attended the supervisors' meeting in June in Key West, there was much discussion of the inaccuracies of the list. So we opted not to remove anybody that was on that list.[182]

Ms. Carroll also testified that she attempted to work with the Executive Board of Clemency to verify the felon list but found that it was "very understaffed" and without "all the technical equipment to check all of these things." Ms. Carroll exercised her "discretion" to not remove names from the voter rolls based on the felony exclusion list.[183]

Miami-Dade County Supervisor of Elections David Leahy found that the statutory language, which ultimately places the burden of an alleged felons

to prove their "innocence," to be a reversed process. Mr. Leahy explained:

> Under Florida law when I'm provided with a list of individuals who the State maintains are convicted felons who have not had their rights restored, it is my responsibility to verify that information to the best of my ability, and if I do not have any information that they are not convicted or that they haven't had their rights restored, them I'm required to remove them from the rolls.
>
> [But you're correct, in essence,] the way it works in reality, the persons on that list who I send notices out to are responsible for giving me information that they are not convicted. So it's kind of a reverse process. They have to prove that they're not convicted felons in order to remain on the list.[184]

In addition to sending notices in the mail, Miami Dade County also held administrative hearings where alleged felons could present their "evidence." Mr. Leahy explained:

> We don't remove these individuals that do not send us information back as convicted felons, because I don't know that for a fact. We go through what is called an administrative hearing process, which is set out in State law, where if people who are provided proper notice that there may be a problem with their registration do not contact us, either in writing or by phone or at an administrative hearing, then they are removed from the rolls.
>
> So we remove many of these individuals because they did not contact us. As part of the administrative hearing process we don't remove them as felons unless we have specific information that they are indeed felons who have not had their rights restored.[185]

Supervisors of elections are required to submit their voter registration files to the Division of Elections upon request. Their voter registration files are compiled into the central voter file, which was used by DBT to provide the felon list.[186]

Mr. Leahy admitted that even the administrative hearing process does not provide complete protection for those wrongfully placed on the felon list. Mr. Leahy recalled that some alleged felons proved their "innocence" through the submission of fingerprints to the Florida Department of Law Enforcement.[187] Mr. Leahy further opined:

> I'm concerned mainly with the process, in that so many of these people don't respond, and I don't know whether it's because they don't get notice or they're confused or what the problem is. But we're removing a lot of people from the rolls when I know for a fact based on the appeal forms that I get back that this is not a truly accurate list. It's drawn off the Florida Department of Law's database and that database was never intended for this purpose, but it's being used for this purpose.
>
> And so I am concerned that we may be removing people through the administrative hearing process that are truly not convicted felons, and that will cause them a problem when they show up to vote in the next election.[188]

Palm Beach County Supervisor of Elections Theresa LePore, also, decided not to use the felon exclusion list provided by DBT Online. Ms. LePore testified that she found errors through her own study of the list and felt that a thorough verification process would be "tedious." Ms. LePore added:

> The last list we got, the infamous list that's been talked about statewide, which was in summer of 2000, statewide had a tremendous amount of problems. One supervisor of elections name even appeared on it and she had nothing more than a traffic ticket. We did some spot checking, found that there were errors, and I felt that I'd rather err on the side of the voter than to take somebody off with the chance that it was an error and to deny someone their right to vote by mistake. It's very time consuming and tedious to try to verify every single name on that list and to—if somebody calls on Election Day, they're on the list and they say they're on there in error, to go through the procedure of trying to make sure that they're eligible to vote, I decided to err on the side of the voter.[189]

Although the Commission record reflects that certain supervisors of elections registered general complaints regarding the use of the exclusion lists, the record does not reflect that the Division of Elections office was flooded with specific examples of Floridians erroneously identified as felons. For example, Beverly Hill, then Alachua County supervisor of elections, registered her complaints regarding the first exclusion list provided by DBT Online.[190] Ms. Hill was concerned that a gentleman, whose clemency papers are dated prior to 1975, still appeared on the felon list.[191]

Three examples of false positives occurred in Monroe County when a supervisor of elections employee, the spouse of another supervisor of elections and the father of Harry Sawyer, the supervisor of elections, were all listed as potential felons.[192]

Division of Elections Responsibilities

Among the duties assigned to Mr. Roberts, director of the Division of Elections are the following:

- Provides technical assistance to the supervisors of election on voter education and election personnel training services.
- Oversees and approves training courses for continuing education for supervisors of elections.
- Coordinates, on an annual basis, two statewide workshops for the supervisors of elections by reviewing and providing updates on the election laws to ensure uniformity statewide in the interpretation of the election laws.[193]

In the fall of 1999, the Division of Elections held training for the supervisors of elections on the Central Voter File as refined by DBT Online.[194] In an Email message to Marlene Thorogood dated April 28, 2000, Janet Modrow, a Division of Elections employee working on the contract, informed DBT that she and then Assistant General Counsel Emmett "Bucky" Mitchell were "swamped with work" and did not feel that training workshops were "really necessary."[195] State officials may have missed an important opportunity to help reduce the risk of removing eligible voters from the voter rolls.

Responses to Implementation of List Maintenance Contract

Florida State Senator Daryl Jones and State Representative Chris Smith, both members of the Governor's Select Task Force on Election Reform, noted their opposition to the use of DBT Online's information in Florida's voter list maintenance:

> Other voters were disenfranchised because a company hired by the Department of State to match voter rolls against other databases to ensure that felons and the dead could not vote did not properly do so. DataBase Technologies included in their list the names of more than 8,000 voters who should not have been removed from the voting rolls. However, by the time the error was caught, it was too late for the counties to fix it; in fact, the first time many of these voters realized they had been removed from the voter rolls was on Election Day. [196]
>
> In Leon County, the supervisor of elections was provided a list of nearly 700 names to purge from the voting rolls. Yet the Supervisor could only confirm 34 as actual felons (St. Pete Times, 12/6/00). In fact, Leon County's supervisor of elections always confirms the names by social security number and birthdate—two pieces of information not used to match the lists by Database Technologies—because he does not trust the information provided to him by this company (St. Pete Times, 12/6/00).[197]

Phyllis Hampton, general counsel of the Florida Elections Commission, testified that her office could investigate the wrongful removal of a Floridian from the voter rolls if there was evidence of a willful violation. Ms. Hampton stated:

> If we had a sworn complaint, which on its face was legally sufficient, we would proceed and look into the matter and see. But one of the requirements to find a violation is that there is willfulness. So if you had a person who had accidentally been removed during the purging of the election records, that would not be a willful violation. You would have to have someone who was deliberately removing people when they should not be removed, for there to be an election law violation.[198]

Barry Krischer, state's attorney for Palm Beach County, testified that although his office has a Civil Rights unit that is in contact with the community, it received no complaints of criminal misconduct, fraud, police presence, limited access, or discrimination at polling places.[199] When asked to what he attributed the lack of complaints received by his office, Attorney Krischer opined that the public does not perceive his office as the appropriate repository for these complaints.

> COMMISSIONER LEE: You mentioned that you had not received any complaints from your office regarding ineligible and race violations.
>
> How does the public know about getting to your office to file complaints? Is it a common knowledge?
>
> MR. KRISCHER: Actually, the public doesn't perceive that the prosecutor's office is the place to go with those complaints. Law enforcement investigates. Then we receive them and we prosecute them. So the public will generally go to the supervisor of election or call Tallahassee.
>
> COMMISSIONER LEE: So it's safe to say that it's not that no one filed complaints, it's just that it never got to your office?
>
> MR. KRISCHER: Correct. They don't perceive our office as the appropriate agency to receive those complaints.[200]

Human Consequences of Felon Exclusion List

The use of the parameters encouraged by Florida's state officials and the lack of any meaningful verification process left many county supervisors confused, and as a result, many Floridians were erroneously removed from the voting lists. One such Floridian was Willie D. Whiting, Jr., a member of the clergy and registered voter in Tallahassee, who went with his family to vote at his assigned Precinct 42 in Leon County.[201] When Apostle Whiting presented his driver's license for identification purposes, the poll worker stated that his name was not on the registration list and called the supervisor of elections in Leon County to verify his registration status. Apostle Whiting asked to speak with a supervisor at that office, and he was told that an individual named Willie J. Whiting, born two days after Apostle Whiting, had been convicted of a felony in the state of Florida. Consequently, Apostle Willie D. Whiting, Jr. learned that he had been wrongfully removed from the registration list.[202] After Apostle Whiting threatened to contact an attorney, he was allowed to vote.

The Commission received testimony from William J. Snow, Jr., a Miami-Dade resident.[203] Mr. Snow testified that he received notice that he would be ineligible to vote in the November 7, 2000, election because of a felony conviction.[204] Receiving the notice "caused a great stress" upon Mr. Snow's heart as he has never been convicted of a felony.[205] Mr. Snow testified that the problem has been corrected.[206] Mr. Snow has been

a Miami-Dade County resident for more than 33 years and voted in the 1996 election without incident.[207]

Marilyn Nelson, a poll worker with 15 years of experience in precinct 232 for Miami-Dade County, encountered "quite a few" people whose names did not appear on the roll at her precinct, and when she called the supervisor's office, she was told that their rights had been taken away from them due to an alleged felony conviction.[208] She was further instructed by the supervisor's office that she could not inform those voters of the reason for their removal from the roll, but she was instructed to "tell them to call downtown at a later date."[209]

Dr. Daryl Paulson testified that the Hillsborough County supervisor of elections estimated that 15 percent of those purged were purged in error, disproportionately African American. Another source estimated that 7,000 voters, mostly African Americans registered as Democrats, were removed from the list.[210]

According to news reports, even those who had received a full pardon for their offenses were listed on DBT's exclusion list. Reverend Willie Dixon, a Tampa resident, received a full pardon for drug offenses in 1985, and has since become a youth leader, a bible preacher, and a "pillar of the Tampa African American community who has voted in every presidential election."[211] But despite his 15 years of voting history status, Pam Iorio, the supervisor of elections for Hillsborough County, sent Rev. Dixon a letter informing him that he had been removed from the rolls because of his prior conviction.[212] Eventually, Rev. Dixon was able to verify his status as a registered voter.[213]

Media accounts also captured the impact of DBT Online's list maintenance and the frustration it caused for Florida voters. In 1959, Wallace McDonald was convicted of a misdemeanor, vagrancy, for falling asleep on a bench in Tampa while he waited for a bus.[214] In 2000, Mr. McDonald received a letter from Pam Iorio, the Hillsborough County supervisor of elections, informing him that as an ex-felon, his name had been removed from the rolls.[215] Despite the efforts of his attorney to correct the problem, Mr. Wallace was not allowed to vote.[216] Mr. McDonald stated:

> I could not believe it, after voting all these years since the 50s, without a problem . . . I knew something was unfair about that. To be able to vote all your life then to have somebody reach in a bag and take some technicality that you can't vote. Why now? Something's wrong[217]

CONCLUSION

Historically, individuals convicted of certain types of crimes, alleged to be committed more by African Americans, are affected by felon disenfranchisement. The ripples of the practice of felon disenfranchisement resulted in the greater likelihood of people of color, African Americans in particular, having a greater likelihood of appearing erroneously on the Florida felon exclusion list.

In claiming to address the same types of fraud found during the 1997 Miami mayoral election, the Florida legislature enacted Chapter 98.0975 of the Florida statutes, which required the Division of Elections to contract with a private entity to purge its voter file of any deceased persons, duplicate registrants, individuals declared mentally incompetent, and convicted felons without civil rights restoration. As a result, DBT Online was eventually approved to assist the Division of Elections in the removal of ineligible voter registrants from the voter file.

Through a matching logic prescribed by the Division of Elections, DBT Online performed an automated matching process against databases provided by the state of Florida and its own databases. Ultimately 173,127 Floridians were identified as potentially ineligible to vote in the November 7, 2000, election. Of those on the list, 57,746 were identified as convicted felons. Based on DBT Online's statistical verification, the list it provided to the Division of Elections was 99.9 percent accurate. The Division of Elections distributed the appropriate portions of the list to the 67 supervisors of elections.

The Division of Elections instructed DBT Online to verify the clemency status of any alleged convicted felon, even those convicted in states with automatic civil rights restoration, with the Florida Executive Clemency Board. Among those states with own Executive Clemency Boards, DBT Online was instructed to confirm the alleged felons' clemency status with the board. The methodology adopted by DBT Online to verify the clemency status of those alleged felons basically consisted of faxing a list to the appropriate state agency.

DBT Online was not required to provide a list of exact name matches. Rather, the matching logic only required a 90 percent name match, which produced "false positives" or partial matches of the data. Moreover, the Division of Elections required that DBT Online perform "nickname matches" for first names and to "make it go both ways." Thus, the name Deborah Ann would also match the name Ann Deborah.

At a meeting in early 1999, the supervisors of elections expressed a preference for exact matches on the list as opposed to a "fairly broad and encompassing" collection of names. DBT Online advised the Division of Elections that it could produce a list with exact matches. The Division of Elections, however, opted to cast a wide net for the exclusion lists.

Former director of the Division of Elections, Ethel Baxter, in 1998, recommended that if the supervisors of elections had any doubt as to the accuracy of an individual's status, then the voter should be allowed to vote by affidavit. The record does not show that before the 2000 election, despite the knowledge of Division of Elections officials that the exclusion lists contained many superfluous names, that they provided similar cautionary advice to the supervisors of elections. The evidence does show that some election officials decided that it further served the state's interests to capture as many names as possible on these exclusion lists.

The process by which each county verified its exclusion list was as varied and unique as the supervisors of elections themselves. Some supervisors of elections sent letters to the proposed felons and held hearings to allow them to produce evidence of their conviction and/or clemency status. Other supervisors of Elections chose not to use the exclusion list at all.

Although the Commission's record reflects that the Division of Elections is responsible for coordinating to statewide workshops annually for the supervisors of elections to ensure uniformity in the interpretation of Florida election laws, the complaints registered by some supervisors of elections suggest that there was no common understanding of the use of the exclusion lists. The Florida legislature's decision to privatize its list maintenance procedures without establishing effective clear guidance for these private efforts from the highest levels, coupled with the absence of uniform and reliable verification procedure, resulted in countless voters being deprived of their right to vote.

[1] George Bruder, Jr., testimony before the U.S. Commission on Civil Rights, Hearing on Election Day Irregularities, Miami, Florida, February 16, 2001, Verified Transcript, p. 178, *quoting* Emmett Bucky Mitchell, a former Division of Elections assistant general counsel who led the purge effort. Mr. Bruder stated that he was quoting the December 10, 2000 edition of the Miami Herald.

[2] The Sentencing Project and Human Rights Watch, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* , October 1998 (hereafter cited as The Sentencing Project, *Losing the Vote)* .

[3] Black's Law Dictionary 712 (7th ed. 1999). Disenfranchisement is defined as the "act of taking away the right to vote in public elections from a citizen or class of citizens." Disenfranchise is defined as to "deprive (a person) of the right to exercise a franchise or a privilege, especially to vote."

[4] Virginia E. Hench, "The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters," *Case Western Reserve Law Review* , vol. 48 (Summer 1998), p. 738 (hereafter cited as Hench, "The Death of Voting Rights"). During Reconstruction, Caucasian advocates for disenfranchisement denounced African Americans as ignorant, lazy, criminally inclined, and a race demonstrably unqualified to vote. Ibid.

[5] The Sentencing Project, *Losing the Vote* (citing Andrew L. Shapiro, "Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy," *Yale Law Journal* , vol. 103 (November 1993), p. 541 (quoting Francis B. Simpkins, Pitchfork Ben Tillman).

[6] The Sentencing Project, *Losing the Vote* (citing Andrew L. Shapiro, "Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy," *Yale Law Journal* , vol. 103 (November 1993), p. 540.

[7] The Sentencing Project, *Losing the Vote.*

[8] The Sentencing Project, *Losing the Vote.*

[9] The Sentencing Project, *Losing the Vote.*

[10] The Sentencing Project, *Losing the Vote.* A former felon or felon who satisfies all sentence requirements has complied with any prison, probation and parole consequences attached to his or her conviction. The other states which disenfranchise former felons for life are: Alabama, Delaware, Iowa, Kentucky, Mississippi, Nevada, New Mexico, Virginia and Wyoming. The Sentencing Project, *Losing the Vote* .

[11] JoNel Newman, staff attorney, Florida Justice Institute, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 32.

[12] The Sentencing Project, *Losing the Vote.* 31.2 percent of African American men in Florida are permanently disenfranchised. Alabama leads the country with 31.5 percent of African American men within its borders permanently disenfranchised. The Sentencing Project, *Losing the Vote* .

[13] The Sentencing Project, *Losing the Vote.*

[14] *Please see* Table 1-2 and surrounding discussion in Chapter One.

[15] Hench, "The Death of Voting Rights," p. 767.

[16] The Sentencing Project, *Losing the Vote* (citing Byers v. Sun Savings Bank, 41 Okla. 728 (1914), quoted by Justice Marshall in his dissent in *Richardson v. Ramirez* , 418 U.S. 24, 78 (1974)).

[17] L. Clayton Roberts Testimony before the U.S. Commission on Civil Rights, Hearing on Election Day Irregularities, Tallahassee, Florida, Jan. 12, 2001, Verified Transcript, pp. 254-255. In 1998, L. Clayton Roberts was employed as the Legislative Research Director of the House Election Reform Committee. L. Clayton Roberts, "DBT Assessment," August 17, 1998. Moreover, the biggest problem in the Miami Mayoral race was the abuse of absentee ballots, not the voting of convicted felons.

State agents uncovered hundreds of fraudulent examples: people who didn't live in the city voting in the election; phony signatures on absentee ballots; and campaign vote brokers acting as witnesses for most of these ballots. The abuses were discovered almost exclusively in the City Commission district of Humberto Hernandez.

Mr. Hernandez was a City Commissioner who was convicted on August 14, 1998 of "helping to cover up vote fraud." Jay Weaver, "Vote Reform Back to Square One; Justice Department Ruling Means State Legislature Must Draft New Law," *Sun-Sentinel (Fort Lauderdale)* , August 23, 1998.

[18] George Bruder, the signatory on the Division of Elections' list maintenance contract and former vice president of Database Technologies, Inc., is now the vice president of the Public Records Group for ChoicePoint, Inc. Mr. Bruder testified under oath at the Commission's Miami hearing and subsequently in a Commission deposition.

[19] George Bruder Testimony, Miami Verified Transcript, p. 200.

[20] George Bruder Testimony, Miami Verified Transcript, p. 200. The record does not indicate the basis for the Division of Elections' need to submit another request for proposals.

[21] George Bruder Testimony, Miami Verified Transcript, pp. 176, 200, 227-228. The record does not indicate whether Computer Business Services eventually submitted a bid. Ibid., p. 200.

[22] Bruder Unverified Deposition at 7. George Bruder, vice president, DBT Online, email, "Voter Registration." August 5, 1998.

[23] Bruder Unverified Deposition at 7.

[24] Bruder Unverified Deposition at 8-9.

[25] George Bruder Testimony, Miami Verified Transcript, p. 199. Neither Database Technologies, Inc. nor its successor, DBT Online, a ChoicePoint Company, presently has a contract with the Florida Department of Law Enforcement.

[26] Bruder Unverified Deposition at 10.

[27] "ChoicePoint and DBT Online Unite, Becoming Leading Provider and On-demand Public Records in the U.S.," Feb. 14, 2000, <http://www.ChoicePoint.net>(March 24, 2001).

[28] DBT Online, ChoicePoint, Press Release, May 16 2000.

[29] DBT Online, ChoicePoint, Press Release, May 16 2000. "Today's meeting also confirmed the appointment of several new members to ChoicePoint's board of directors including Doug Curling, ChoicePoint's chief operating officer, and former DBT board members Charles G. Betty, Frank Borman, Kenneth G. Langone and Bernard Marcus. Mr. Betty is currently president and CEO of EarthLink Network, Inc., the nation's second largest Internet service provider. Mr. Borman, a former astronaut, has served as chairman and CEO in a number of companies including Eastern Airlines, and is currently on the board of directors for The Home Depot, Inc., and American Semiconductor Corporation. Mr. Langone is one of the co-founders of The Home Depot and a director of the Company since 1978. He also serves as a director of the New York Stock Exchange, Inc., General Electric Company, Unifi, Inc. and Tricon Global Restaurants. Mr. Marcos is a co founder and chairman of The Home Depot, Inc. He also serves on the boards of National Service Industries, Inc., Westfield America, Inc. and the National Foundation for Disease Control and Prevention. Ibid.

[30] George Bruder Testimony, Miami Verified Transcript, p. 177.

[31] George Bruder Testimony, Miami Verified Transcript, p. 177.

[32] George Bruder Testimony, Miami Verified Transcript, p. 177.

[33] George Bruder Testimony, Miami Verified Transcript, pp. 204-206.

[34] Bruder Unverified Deposition at 46.

[35] Bruder Unverified Deposition at 46.

[36] Bruder Unverified Deposition at 46.

[37] Bruder Unverified Deposition at 47.

[38] Letter to the Honorable Mary Frances Berry, chairperson of the United States Commission on Civil Rights from George A. Bruder, Jr., vice president, Public Records Group, DBT Online, a ChoicePoint Company, "Testimony Clarification," March 16, 2001.

[39] Letter to the Honorable Mary Frances Berry, chairperson of the United States Commission on Civil Rights from George A. Bruder, Jr., vice president, Public Records Group, DBT Online, a ChoicePoint Company, "Testimony Clarification," March 16, 2001.

[40] *See* Fla. Stat. ch. 98.0975 (4) (1999).

[41] George Bruder Testimony, Miami Verified Transcript, pp. 202-203.

[42] George Bruder Testimony, Miami Verified Transcript, p. 203.

[43] George Bruder Testimony, Miami Verified Transcript, pp. 224-225.

[44] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 1, Apr. 12, 2001, at 3.

[45] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 1, Apr. 12, 2001, at 3.

[46] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 1, Apr. 12, 2001, at 3.

[47] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 1, at 3.

[48] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 2, Apr. 12, 2001, at 4. Please see http://www.hsmv.state.fl.us/data/internet2.html - accessed on March 16, 2001.

[49] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 2, Apr. 12, 2001, at 4.

[50] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 2, Apr. 12, 2001, at 4.

[51] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response Commission's to Interrogatory 3, Apr. 12, 2001, at 4.

[52] Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission's Interrogatory 4, Apr. 12, 2001, at 4.

[53] George Bruder Testimony, Miami Verified Transcript, p. 207. DBT Online paid approximately $1,641 or $100 per hour to a Florida Atlantic University mathematics graduate assistant to perform the statistical analysis of its methodology for the Division of Elections contract. Marlene Thorogood, DBT Online, project manager, Division of Elections contract "Check Requests and Invoices."

[54] Letter to Emmett Mitchell, IV, assistant general counsel, Division of Elections from Marlene L. Thorogood, project manager, DBT Online, "Statistical Verification and Phase I Concerns," March 22, 1999.

[55] Letter to Emmett Mitchell, IV, assistant general counsel, Division of Elections from Marlene L. Thorogood, project manager, DBT Online, "Statistical Verification and Phase I Concerns," March 22, 1999.

[56] Letter to Emmett Mitchell, IV, assistant general counsel, Division of Elections from Marlene L. Thorogood, project manager, DBT Online, "Statistical Verification and Phase I Concerns," March 22, 1999.

[57] George Bruder Testimony, Miami Verified Transcript, p. 208.

[58] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[59] Interview Report, Janet Modrow, May 15, 2001, p. .

[60] George Bruder Testimony, Miami Verified Transcript, pp. 177-178.

[61] George Bruder Testimony, Miami Verified Transcript, p. 178.

[62] George Bruder Testimony, Miami Verified Transcript, pp. 218-219.

[63] George Bruder Testimony, Miami Verified Transcript, p. 220.

[64] George Bruder Testimony, Miami Verified Transcript, p. 220. At the time the parameter decisions were made, Emmett Mitchell (assistant general counsel for the Division of Elections), Janet Modrow (Division of Elections Technical Specialist) and Ethel Baxter (director of the Division of Elections) worked with DBT Online. Ibid., p. 221.

[65] George Bruder Testimony, Miami Verified Transcript, pp. 220-221.

[66] George Bruder Testimony, Miami Verified Transcript, p. 219.

[67] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, pp. 257-258.

[68] At the February 16, 2001 Commission hearing, George Bruder agreed to submit to a deposition for further examination of the role DBT Online played in the removal of purported felons from the Florida voter files. The deposition was held on March 21, 2001 in Miami, Florida.

[69] Bruder Unverified Deposition at 14.

[70] Bruder Unverified Deposition at 16.

[71] Bruder Unverified Deposition at 14.

[72] Bruder Unverified Deposition at 15-16.

[73] Bruder Unverified Deposition at 15.

[74] Bruder Unverified Deposition at 17.

[75] Emmett "Bucky" Mitchell, Division of Elections, former assistant general counsel, "Your letter," March 23, 1999.

[76] Bruder Unverified Deposition at 17.

[77] Bruder Unverified Deposition at 17.

[78] Bruder Unverified Deposition at 49-56. Each supervisor of elections was invited to the meeting. It is unconfirmed if all supervisors of elections attended the meeting and/or sent a representative to the June 1999 meeting with the Division of Elections and DBT Online representatives.

[79] Bruder Unverified Deposition at 55.

[80] Bruder Unverified Deposition at 56. Former Broward County Supervisor of Elections Jane Carroll, also, recalled the June meeting with the Division of Elections, DBT Online and the other supervisors of elections. Ms. Carroll recalled that "inaccuracies" were discussed at the meeting. Ms. Carroll did not remove anyone from the Broward County voter rollsbased on the two exclusion lists DBT Online gave to the Division of Elections. Jane Carroll Testimony, Miami Verified Transcript, p. 290.

[81] Bruder Unverified Deposition at 56-57. Mr. Bruder testified that the regional training sessions occurred over a couple of months.

[82] Bruder Unverified Deposition at 57-58.

[83] Letter to the Honorable Mary Frances Berry, chairperson of the United States Commission on Civil Rights from George A. Bruder, Jr., vice president, Public Records Group, DBT Online, a ChoicePoint Company, "Testimony Clarification," March 16, 2001. The contract allowed a total payment of $4,365,800 for completion of four phases of the contract, including renewal through the year 2001. Because the Division of Elections did not renew its option with DBT Online through 2001, DBT Online was not paid the full contract price. Exhibit A, Data Processing Services Agreement, November 28, 1998.

[84] Letter to the Honorable Mary Frances Berry, chairperson of the United States Commission on Civil Rights from George A. Bruder, Jr., vice president, Public Records Group, DBT Online, a ChoicePoint Company, "Testimony Clarification," March 16, 200. DBT Online incorporated in 1992 and has been a provider of anti-fraud services to the following Florida agencies: Department of Children and Family Services, Department of Law Enforcement, Department of Corrections, Department of Business and Consumer Affairs, Department of Revenue, Department of State, Department of Insurance, Office of the Attorney General and Agency for Health Care Administration. DBT Online, "DBT—a Florida Company," not dated. In October of 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections. DBT Online, also, is the intellectual property owner of the following products:

AutoTrack Plus & Auto Track XP—online investigative database service

SOS—online Insurance industry service

PFATS—Medicaid anti-fraud service [Provider Fraud Analysis and Tracking Service]

CLAWS—Arrest warrant tracking service [Criminal Locator and Warrant Service]

DataCase - online public access system for New York Unified Courts

PQS—anti-fraud service for private insurance carriers [Provider Query System]

See "Products," not dated. In October of 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online is either the intellectual property owner of or has access to the types of national databases containing over 4 billion records on over 200 million adults. [*See* "Databases," not dated.] In October of 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.]: Aircraft, Boats and Vessels, Businesses (including American Business Information and Dun & Bradstreet), Corporations, Criminal histories (including felony convictions and criminal arrests), Driver Licenses, Individuals, Motor Vehicles, Properties, Professional Licenses, Social Security Death File and real time access to Telephone numbers. *See* "National Databases," not dated. In October of 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online is either the intellectual property owner of or has access to the following types of Florida databases: Arrest Warrants, Banking Licensing, Beverage Licensing, Boat

Registrations, Business Ownership, Convicted Felons, Corporations, Concealed Weapons, Driver Licenses, Divorces, Marriages, Motor Vehicles, Professional Licenses, Real Estate Ownership and Sexual Predators. *See* "Florida Databases," not dated. In October of 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

[85] Division of Elections for the state of Florida, "Felony Check Invoice," December 1, 1999, 0015531, 0015532, 0015533.

[86] Division of Elections for the state of Florida, "Felony Check Invoice," December 1, 1999, 0015531, 0015532, 0015533.

[87] Bruder Unverified Deposition at 12.

[88] George Bruder Testimony, Miami Verified Transcript, p. 208.

[89] George Bruder Testimony, Miami Verified Transcript, p. 208.

[90] Scarlet Kirner, DBT Online, email, "Statewide criminal histories," Apr. 14, 1999. DBT Online had the following information for the aforementioned states as of the date of the email:

Florida—Predator information, current as of 6/24/98

Department of Corrections (DOC), current as of 2/28/99

Ohio—DOC, current as of 3/15/99

South Carolina—DOC, current as of 3/9/99)

New Jersey—Active inmates and departures, current as of 6/30/98

Connecticut—Court convictions, current as of 2/28/99

Texas—Predator information, current as of 11/14/98

DOC, current as of 3/8/99

Parole, current as of 2/28/99

Wisconsin—DOC, current as of 11/6/98

Kentucky—DOC, current as of 7/14/98

Virginia—Parole, current as of 2/28/99

Washington—Releases, current as of 12/31/98

Illinois—DOC, current as of 12/97

Ms. Kirner's email, also, states that the current Texas DOC and the Florida DOC and Predator information were available online.

[91] Marlene Thorogood, DBT Online, project manager, Division of Elections contract, "DOE Clemency Queries," March 4, 2000.

[92] Marlene Thorogood, DBT Online, project manager, Division of Elections contract, "DOE Clemency Queries," March 4, 2000. Ms. Thorogood was unsure of Ohio's clemency status at the time she wrote the email. Ohio requires convicted felons to apply for clemency. *See* Ohio Rev. Code Ann. § 2967.07 (2001). *See also* Marie Smith, state of Washington, Department of Corrections, Information Technology, "Fax information," March 28, 2000.

[93] Marlene Thorogood, DBT Online, project manager, Division of Elections contract, "Reciprocal States for Clemency," August 8, 2000.

[94] George Bruder Unverified Deposition at 19.

[95] George Bruder Testimony, Miami Verified Transcript, p. 209.

[96] George Bruder Testimony, Miami Verified Transcript, p. 210.

[97] George Bruder Testimony, Miami Verified Transcript, p. 211.

[98] George Bruder Testimony, Miami Verified Transcript, pp. 211, 217.

[99] George Bruder Testimony, Miami Verified Transcript, pp. 211-212.

[100] U.S. Const. art. IV, § 1 states:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

[101] Both cases involved men who were convicted in other states, possessed their civil rights upon moving to Florida and were denied concealed weapon permits. In *Schlenther v. Florida Dep't of State* , a Florida resident was convicted of felony while he lived in Connecticut. 743 So. 2d 536, 537 (1998). Prior to his move to Florida, the state of Connecticut reinstated his civil rights. Mr. Schlenther applied for and received a concealed weapons permit after moving to Florida. Schelenther v. Florida Dep't of State, 743 So. 2d 536, 537 (1998). The permit was subsequently revoked when the Florida Licensing Division determined that Mr. Schelenther neither applied for no received civil rights restoration in Florida. The Second District Court of Appeals ruled that when Section 8, Article IV of the Florida Constitution [which grants authority to the governor with the approval of three Cabinet members to restore civil rights] was drafted:

(I)t was anticipated that the governor would be granting pardons, commuting punishments and remitting fines and forfeitures for Florida offenders, since the Governor of Florida could not do such things for out-of-state offenders. We believe the same analysis applies to the restoration of civil rights. Once another state restores the civil rights of one of its citizens whose rights had been lost because of a conviction in that state, they are restored and the State of Florida has no authority to suspend or restore them at that point. The matter is simply at an end.

We conclude that the restoration of [Schelenther]'s civil rights in Connecticut is entitled to full faith and credit in this State…

In *Doyle v. Florida Department of State, Division of Licensing* , a Florida resident was convicted of a misdemeanor in New York that would have been a felony if committed in Florida. Doyle v. Florida Dep't of State, 748 So. 2d 353, 354 (1999). Because Mr. Doyle was convicted of a misdemeanor, his civil rights were never suspended in the state of New York. *Doyle* , 748 So. 2d at 355-6.

Mr. Doyle's application for a concealed weapon permit was denied by the Florida Licensing Division because the crime for which he was convicted in New York carried felonious penalties in Florida. Relying on *Schlenther* , the First District Court of Appeals ruled that once a sister state restores a person's civil rights, then Florida is required to give full faith and credit to the civil rights restoration. *Doyle* , 748 So. 2d. at 356. Moreover, the Court found that Mr. Doyle could not prove that his civil rights were restored in Florida because they had never been suspended in New York. *Doyle* , 748 So. 2d. at 356. The Court stated that:

The governor of Florida has neither the power to restore the civil rights of out-of-state offenders which have already been restored by another state, nor the authority to restore the civil rights of those whose rights were never suspended by another jurisdiction.

Doyle , 748 So. 2d. at 356.

[102] George Bruder Testimony, Miami Verified Transcript, p. 212.

[103] Section 8(a), Article IV, Florida State Constitution. In 2003, only two members of the Cabinet will be required to agree with the governor to restore the civil rights of a convicted felon.

[104] Section 4(a), Article IV, Florida State Constitution. The governor's Cabinet will consist of only an attorney general, a chief financial officer, and a commissioner of Agriculture, effective in 2003.

[105] L. Clayton Roberts, director, Division of Elections, "Resign to Run Opinion to Harris," August 22, 2000, 0022024.

[106] L. Clayton Roberts, director, Division of Elections, "Resign to Run Opinion to Harris," August 22, 2000, 0022024.

[107] L. Clayton Roberts, director, Division of Elections, "Resign to Run Opinion to Harris," August 22, 2000, 0022024. "Fifty-seven cases were heard and acted upon by the Clemency Board in June." Ibid.

[108] Fla. Stat. ch. 940.061 (1999).

[109] Fla. Stat. ch. 940.03 (1999).

[110] Fla. Stat. ch. 940.03 (1999). Although the statutory language states that the applicant "may" be required to send a copy of his or her application to the appropriate judge and prosecutor of the Court in which (s)he was convicted, the clemency application requires the applicant to certify that (s)he has mailed a copy to the judge and prosecutor. The clemency application also requests that the applicant certify that (s)he has no pending charges at the time. The application makes no distinction between pending felony, misdemeanor or infraction charges against the applicant.

[111] A copy of the clemency application was provided by the Florida Office of Executive Clemency.

[112] Letter from Janet H. Keels, coordinator for the Office of Executive Clemency to Ed Kast, assistant director, Division of Elections, Tallahassee, FL, February 23, 2001.

[113] Letter from Janet H. Keels, coordinator for the Office of Executive Clemency to Ed Kast, assistant director, Division of Elections, Tallahassee, FL, February 23, 2001.

[114] Letter from Janet H. Keels, coordinator for the Office of Executive Clemency to Ed Kast, assistant director, Division of Elections, Tallahassee, FL, February 23, 2001.

[115] State of Florida rules of Executive Clemency, Rule 9, pp. 5-6.

[116] State of Florida rules of Executive Clemency, Rule 9, p. 7.

[117] In an executive order issued by Gov. Jeb Bush on Dec. 14, 2000, the Select Task Force on Election Reform was created to study and make written policy recommendations and/or propose legislation to improve the election procedures, standards and technology employed in each of Florida's 67 counties.

[118] Daryl Jones Testimony, Select Task Force on Election Reform, Tallahassee, Jan. 9, 2001, p. 307.

[119] Interview Report Addendum—Michael de Janes, May 14, 2001, p. 1. Derek Smith, ChoicePoint, Inc., chairman, president and chief executive officer, "Letter to all ChoicePoint Associates from Derek Smith," Jan. 12, 2001.

[120] Interview Report Addendum—Michael de Janes, May 14, 2001, p. 1.

[121] Derek Smith, ChoicePoint, Inc., chairman, president and chief executive officer, "Letter to all ChoicePoint Associates from Derek Smith," Jan. 12, 2001.

[122] Interview Report Addendum—Michael de Janes, May 14, 2001, p. . Derek Smith, ChoicePoint, Inc., chairman, president and chief executive officer (CEO), "Letter to all ChoicePoint Associates from Derek Smith," Jan. 12, 2001.

[123] Interview Report Addendum—Michael de Janes, May 14, 2001, p. 1.

[124] Marie Smith, state of Washington, Department of Corrections, Information Technology, "Fax information," March 28, 2000.

[125] Dottie Swanagan, state of Kentucky, secretary of state's office, "Kentucky Clemency information," June 15, 1999. *See also* Dottie Swanagan, state of Kentucky, secretary of state's Office, "Restoration of Civil Rights," March 29, 2000.

[126] Marlene Thorogood, DBT Online, project manager, Division of Elections contract, "Clemency Verification," Apr. 26, 1999. *See also* , Donna Van Nostrand, state of New Jersey, Department of Corrections, Administrator, Policy Analysis and Planning, "Per our conversation," June 13, 2000.

[127] Marlene Thorogood, DBT Online, project manager, Division of Elections contract, "Clemency/Felons," May 11, 1999.

[128] Fla. Stat. ch. 98.0975 (4).

[129] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update and Discussion," August 11, 1998.

[130] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update and Discussion, August 11, 1998.

[131] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update and Discussion," August 11, 1998

(emphasis deleted).

[132] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update," August 14, 1998.

[133] Ethel Baxter, Memorandum to Supervisors of Elections, August 14, 1998, Florida Department of State, Division of Elections files (emphasis added).

[134] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update II," August 18, 1998.

[135] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update II," August 18, 1998.

[136] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update II," August 18, 1998.

[137] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update II," August 20, 1998.

[138] Memorandum from Ethel Baxter, director of the Division of Elections to the Supervisors of Elections, "Central Voter File Update II," August 20, 1998.

[139] L. Clayton Roberts Testimony, Select Task Force on Election Reform, Tallahassee, Jan. 9, 2001, p. 288.

[140] Both letters were included as examples in a Division of Elections sponsored training in 1999.

[141] Alleged Felon Form Letter form Miami-Dade County Supervisor of Elections David Leahy, n.d. (hereafter cited as Leahy Letter) (emphasis added).

[142] Leahy Letter. The alleged felon is instructed to send the completed form to the Florida Department of Law Enforcement Special Desk if (s)he believes that his or her name and identifying information is being confused with that of a convicted felon. If the alleged felon has indeed been convicted of a felony and has had his or her civil rights restored, then (s)he is instructed to request proof from the Office of Executive Clemency. Otherwise, the alleged felon is instructed to send the completed form to the Florida Department of Law Enforcement Disposition address.

[143] Leahy Letter.

[144] Alleged Felon Form Letter from Leon County Supervisor of Elections Ion Sancho, n.d. (hereafter cited as Sancho Letter) (emphasis added).

[145] Sancho Letter.

[146] Sancho Letter. The alleged felon must check a block, sign, and date the form.

[147] Bruder Unverified Deposition at 53.

[148] Letter from Patricia M. Hollarn, Okaloosa County supervisor of elections, to alleged felons, 1998.

[149] Letter from Patricia M. Hollarn, Okaloosa County supervisor of elections, to alleged felons, 1998. The letter makes no distinction between those convicted in a Florida court, a federal court, or an out-of-state court.

[150] Letter from Patricia M. Hollarn, Okaloosa County supervisor of elections, to alleged felons, "Okaloosa Felon Letter," 1998.

[151] Letter from Patricia M. Hollarn, Okaloosa County supervisor of elections, to alleged felons, "Okaloosa Felon Letter," 1998.

[152] Letter from Patricia M. Hollarn, Okaloosa County supervisor of elections, to alleged felons, "Okaloosa Felon Letter," 1998.

[153] Fax to Division of Elections from Florida Department of Law Enforcement, "Verification of Voting Status," August 14, 1998.

[154] Fax to Division of Elections from Florida Department of Law Enforcement, "Verification of Voting Status," August 14, 1998.

[155] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[156] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[157] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[158] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[159] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[160] L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258.

[161] Linda Howell Testimony, Tallahassee Verified Transcript, p. 26.

[162] See, State Senator Daryl Jones and State Representative Chris Smith, "Report; Accuracy and Fairness for Florida's Voters—Analysis and Recommendations by Democratic Legislators Serving on the Task Force on Election Procedures, Standards and Technology," Jan. 8, 2001 <http://www.leg.stat.fl.us> accessed Mar. 21, 2001.

[163] Linda Howell Testimony, Tallahassee Verified Transcript, p. 26.

[164] Linda Howell Testimony, Tallahassee Verified Transcript, p. 39, 41. Ms. Howell testified that she received the list compiled by DBT Online from the Division of Elections.

[165] Linda Howell Testimony, Tallahassee Verified Transcript, p. 40.

[166] Linda Howell Testimony, Tallahassee Verified Transcript, p. 40.

[167] Linda Howell Testimony, Tallahassee Verified Transcript, p. 39.

[168] Linda Howell Testimony, Tallahassee Verified Transcript, p. 39.

[169] Linda Howell Testimony, Tallahassee Verified Transcript, p. 43.

[170] Linda Howell Testimony, Tallahassee Verified Transcript, p. 43.

[171] Linda Howell Testimony, Tallahassee Verified Transcript, p. 39.

[172] Linda Howell Testimony, Tallahassee Verified Transcript, p. 39.

[173] Linda Howell Testimony, Tallahassee Verified Transcript, p. 40.

[174] Linda Howell Testimony, Tallahassee Verified Transcript, p. 43

[175] Linda Howell Testimony, Tallahassee Verified Transcript, p. 43.

[176] Linda Howell Testimony, Tallahassee Verified Transcript, p. 44.

[177] Linda Howell Testimony, Tallahassee Verified Transcript, p. 44.

[178] Linda Howell Testimony, Tallahassee Verified Transcript, p. 41.

[179] Ion Sancho Testimony, Tallahassee Verified Transcript, pp. 70-71.

[180] Ion Sancho Testimony, Tallahassee Verified Transcript, p. 72. Mr. Sancho explained that this process may work differently in other counties.

[181] Ion Sancho Testimony, Tallahassee Verified Transcript, p. 72-73.

[182] Jane Carroll, Former Broward County supervisor of elections, Testimony Miami Verified Transcript, February 16, 2001, pp. 289-290.

[183] Jane Carroll, Former Broward County supervisor of elections, Testimony Miami Verified Transcript, February 16, 2001, pp. 298-299.

[184] David Leahy, Miami-Dade County supervisor of elections, Testimony, Miami Verified Transcript, February 16, 2001, p. 315.

[185] David Leahy, Miami-Dade County supervisor of elections, Testimony, Miami Verified Transcript, February 16, 2001, pp. 315–318.

[186] David Leahy, Miami-Dade County supervisor of elections, Testimony, Miami Verified Transcript, February 16, 2001, pp. 325-326.

[187] David Leahy, Miami-Dade County supervisor of elections, Testimony, Miami Verified Transcript, February 16, 2001, pp. 320-326.

And there are some instances where the response came back that they were a convicted felon according to FDLE and then they submitted fingerprints and it was determined it was actually somebody else who was the convicted felon, that they were not. Ibid.

[188] David Leahy, Miami-Dade County supervisor of elections, Testimony, Miami Verified Transcript, February 16, 2001, pp. 327-328.

[189] Theresa LePore, Palm Beach County supervisor of elections, Testimony, Miami Verified Transcript, February 16, 2001, pp. 399-400.

[190] Beverly Hill, Alachua County supervisor of elections, "Central Voter File Reports," March 9, 1999.

[191] Beverly Hill, Alachua County supervisor of elections, "Central Voter File Reports," March 9, 1999. "(O)ne person who was restored earlier than 1975 (I saw his papers) is still on our list, and one is still on the list from the last time [whose adjudication was withheld], and we informed FDLE." Ibid.

[192] Marlene Thorogood, DBT Online, project manager, Division of Elections contract, "Felony Information," June 17, 1999.

[193] "Director's Office; Administrative/Legal," *Division of Elections-Florida Department of State* , n.d., http://election.dos.state.fl.us/about/director.shtml> (May 9, 2001).

[194] Emmett "Bucky" Mitchell, Division of Elections, former assistant general counsel, "CVF Training Sessions," October 5, 1999. The letter, also, credits DBT Online Project Manager Marlene Thorogood for her participation in the training for which the Division of Elections "received very positive feedback from the supervisors and staff who attended." Ibid.

[195] Janet Modrow, Division of Elections, "Workshops," Apr. 28, 2000.

[196] But see contrasting testimony of L. Clayton Roberts, director, Division of Elections, in which he claims that the problem was addressed and that, "no person was removed from the voter roll based on that erroneous information." L. Clayton Roberts Testimony, Tallahassee Verified Transcript, p. 258. *See infra.*

[197] State Senator Daryl Jones and State Representative Chris Smith, "Report: Accuracy and Fairness for Florida's Voters—Analysis and Recommendations by Democratic Legislators Serving on the Task Force on Election Procedures, Standards and Technology," Jan. 8, 2001 <http://www.leg.state.fl.us> (accessed Mar. 21, 2001).

[198] Phyllis Hampton, general counsel for Florida Elections Commission, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 153-154.

[199] Barry Krischer, state's attorney, Florida Fifteenth Judicial Circuit, Palm Beach County, Testimony, Miami Verified Transcript, February 16, 2001, pp. 191-192, 194-195.

[200] Barry Krischer, state's attorney, Florida Fifteenth Judicial Circuit, Palm Beach County, Testimony, Miami Verified Transcript, February 16, 2001, pp. 229-230.

[201] Willie D. Whiting Testimony, Tallahassee Verified Transcript, p. 32.

[202] Willie D. Whiting Testimony, Tallahassee Verified Transcript, p. 32.

[203] The United States Commission on Civil Rights received Mr. Snow's testimony via affidavit.

[204]Affidavit of William J. Snow, Jr. Miami-Dade County.

[205]Affidavit of William J. Snow, Jr. Miami-Dade County. Mr. Snow did not state the extent by which this great stress upon his heart affected his health.

[206]Affidavit of William J. Snow, Jr. Miami-Dade County. Mr. Snow neither explained the process by which the confusion of his voting eligibility was corrected nor when the correction was made.

[207]Affidavit of William J. Snow, Jr. Miami-Dade County.

[208] Marilyn Nelson Testimony, Tallahassee Verified Transcript, p. 130.

[209] Marilyn Nelson Testimony, Tallahassee Verified Transcript, p. 130.

[210] Daryl Paulson, PhD, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 186-189.

[211] Julian Borger, "How Florida Played the Race Card," *The Guardian Observer* , Dec. 4, 2000 <http://www.guardianunlimited.co.uk> (accessed Dec. 6, 2000) (hereafter cited as Borger article, "How Florida Played the Race Card.")

[212] Borger, "How Florida Played the Race Card."

[213] It is unknown whether or not Rev. Dixon was able to vote in the November 7, 2000 election.

[214] Borger, "How Florida Played the Race Card."

[215] Borger, "How Florida Played the Race Card."

[216] Borger, "How Florida Played the Race Card."

[217] Borger, "How Florida Played the Race Card."

DRAFT STAFF REPORT ON

Voting Irregularities in Florida During the 2000 Presidential Election

(Not Official Unless and Until Approved by a Majority of the Commissioners)

Chapter Six

Accessibility Issues

> *The right to vote is not only a sacred testament to the struggles of the past. It is an indispensable weapon in our current arsenal of efforts to empower those who have traditionally been left out.* [1]

After the November 7, 2000, election, newspapers were plastered with headlines about the complaints of Americans alleging their ability to vote was delayed, blocked, or otherwise impeded. In the aftermath of the election, at least one lawsuit was filed on behalf of a civil rights group[2] and Governor Jeb Bush appointed a task force, which recommended sweeping reforms in election machinery.[3]

A large of number of Floridians were denied the right to vote during the past presidential election. Some voting rights experts reported that there were more complaints in Florida than any other state during the election.[4] A disproportionate number of Florida voters excluded from the election process are racial and language minorities who faced an array of problems.[5]

The grievances voiced by Floridians at the Commission's hearings on Election Day Irregularities held in Tallahassee and Miami included inaccessible polling places for people with disabilities and the inability to receive language assistance. This chapter focuses on Accessibility—the physical barriers and language barriers that disenfranchised Florida voters.

SPECIAL NEEDS ASSISTANCE

The Voting Rights Act of 1965 and its subsequent amendments are designed to ensure every citizen entitled to vote can both register to vote and have access to his or her polling site—both physical accessibility and ballot accessibility. Physical accessibility includes not only accessible entrance into a voting precinct, but physical access to a polling booth. Ballot accessibility includes ballots that do not discriminate against blind or visually impaired individuals as well as individuals who are unable to read English. The Commission's hearings in Florida included testimony from Floridians with disabilities and of limited English proficiency, contending they were disenfranchised in the November 2000 election because their precincts were not accessible.[6]

ACCESS TO PRECINCTS FOR INDIVIDUALS WITH DISABILITIES

In 1984, Congress passed the Voter Accessibility for the Elderly and Handicapped Act (VAEHA), which requires that all polling places be physically accessible to voters with disabilities.[7] When a polling place is not accessible, the polling place must be relocated or made temporarily accessible.[8] If neither of these options is achievable, election officials might be allowed to employ an alternate method, such as curbside voting.[9] Specifically, the statute provides that

> (a) within each State … each political subdivision within each State … responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.[10]

The statute required the Federal Election Commission (FEC) to report to Congress "no later than December 31 of each even-numbered year … the number of accessible and inaccessible polling places in such State on the date of the preceding general federal election, and the reasons for such inaccessibility." The FEC was only required to file these reports for a "period for 10 years beginning in … 1984."[11] The FEC fulfilled this duty, collecting data through self-reporting by local jurisdictions. The FEC's final report in 1992 asserted that 86 percent of the polling places in the United States were physically accessible to individuals with disabilities seeking to exercise their right to vote.

Disability advocacy groups, routinely hearing from their constituents, were skeptical of these numbers and have challenged these numbers, conducting their own surveys to determine compliance with VAEHA. In fact, a recent report titled *Voters Denied Equal Access at the Polls* [12] found numbers startlingly different from those of the FEC. *Voters Denied* found that "voters with disabilities frequently encountered physical accessibility problems at their polling places."[13] The report noted that independent surveys and court cases suggest that potentially 40 percent of polling places "continue to pose significant accessibility problems for voters with disabilities."[14]

Florida's Polling Places Inaccessibility for Individuals with Disabilities

At the Commission's Tallahassee hearing, Jim Dickson of the National Organization on Disability, testified that the inaccessibility of the nations' voting systems means that many people with disabilities are unable to vote.[15] In addition, many of these individuals with disabilities found

themselves forced to cope with inaccessible polling places that failed to provide proper accommodations. In some polling places, individuals using wheelchairs had to negotiate steps and unreachable polling booths. Some visually impaired voters were not provided with "proper equipment[s]" to assist them in reading the ballots. As a result, they had to rely on poll workers and others to cast their ballots, denying them the right to a secret ballot. Many poll workers were not adequately trained to provide proper assistance to individuals with disabilities, denying these voters their rights.

The following examples present vivid illustrations of the barriers individuals with disabilities encountered when attempting to vote.

- Joy Cohen, an elderly woman from Broward County, who relies on her wheelchair stated that her polling place did not have wheelchair-accessible ramps and did not provide curbside voting. As a result, she had to be lifted into her polling place. She testified how disappointing it was for her that she had spent her life advocating for legislation that would provide proper assistance for individuals with disabilities, and the one time she was in need of help, that assistance was not provided for her.[16]
- Harold Cousminer, a visually impaired voter from Palm Beach County, was given improper equipment to assist him in voting. The poll workers were unfamiliar with providing assistance and accommodations for individuals with disabilities. He was given a magnifying screen to see the ballot but the magnifying screen could not be used for his butterfly ballot. He ultimately relied on his wife to cast his ballot and believed that his right to a secret ballot was denied.[17]
- Dr. Frederick Shotz, a resident of Broward County, had to use his upper body to lift himself up to get up the steps in order for him access his polling place. Once he was inside the polling place, he was not given a wheelchair accessible polling booth. Once again, he had to use his arms to lift himself up to see the ballot and, while balancing on his arms, simultaneously attempt to cast his ballot. He testified that an individual using a wheelchair who did not have the same upper body strength could not have accessed his polling place. He also stated that his polling place did not provide curbside voting and described curbside voting as a "wonderful fantasy that never came true."[18]
- A resident of Miami-Dade County testified that his polling place was under construction and that it would have been impossible for individuals using wheelchairs to access. The pavement leading to the main entrance of the building was broken and the surrounding areas were muddy.[19]
- A Palm Beach resident in poor health brought his wife and his nurse to assist him in voting. Neither was allowed to assist the resident to vote. Rather, a precinct worker assisted the voter and told him to fill in the first bubble if he wanted Bush or the second bubble if he wanted Gore, which was in fact the bubble for Buchanan. Thus, the resident did not vote for the candidate of his choice.[20]

In one particularly egregious situation in Palm Beach, a group of people with disabilities had arranged for a bus to transport them from their condominium to their polling place. When they arrived, they discovered that the polls were on the second floor of the building with no elevator. "Those people who were disabled, therefore, one by one, using the wheelchair left in the bus, got back on the bus, went back to their condominium association buildings without ever casting a vote."[21] These are not isolated instances. Based on the hearings held by the Commission and the testimony of witnesses, numerous Florida residents encountered obstacles to polling precincts and were thus disenfranchised.

Miriam M. Oliphant, supervisor of elections for Broward County, conceded that some precincts in her district are inaccessible and need ramps to comply with accessibility requirements.[22] Ms. Oliphant also admitted that some precincts were not only inaccessible, but could not be ramped or made accessible and needed to "be replaced."[23]

Requirements of accessibility are not limited to individuals with physical disabilities. The VRA requires "ballot accessibility." This includes voters who are blind or visually impaired and those with language barriers. Accessibility means that individuals with accessibility issues—whether they be physical or language issues—should have the same access to precincts and the ballots as individuals without these barriers.

ACCESS TO PRECINCTS FOR INDIVIDUALS REQUIRING LANGUAGE ASSISTANCE

The majority of non-English-speaking Americans are native-born citizens constitutionally entitled to vote.[24] Congress responded in 1975 by enacting amendments to the Voting Rights Act of 1965, addressing voting discrimination against members of "language minority groups,"[25] which prohibit states from providing voting materials exclusively in English when certain conditions exist.[26] Prior to the 1975 legislation,[27] which requires multilingual voting assistance in areas with large numbers of non-English speakers, people who did not understand English were effectively disenfranchised by elections held only in English. Congress enacted a multilingual requirement if:

> (i)(I) more than five percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;
>
> (II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited- English proficient; or
>
> (III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than five percent of the . . . citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and
>
> (ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.[28]

The law requires that when this provision applies, all "voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots[,]" be provided in the appropriate language of the minority group as well as English.[29]

Florida's Ballot Inaccessibility for Non-English or Limited English Proficient Voters

Despite the requirements that non-English-proficient voters be provided with some form of language assistance, large numbers of limited English-speaking voters were denied this assistance at the polling places all around Florida. This occurred in counties and precincts where bilingual ballots and language assistance were mandated. Because of this failure to provide proper language assistance, voters faced problems understanding the ballots or the fundamental procedure of voting. The groups disproportionately affected were Haitian Americans and Spanish-speaking Latinos. Many poll workers were not properly trained to handle language assistance issues. Some voters found that even when there were willing volunteers available to provide assistance, the volunteers or precinct workers were prevented from providing language assistance. In some instances, bilingual poll workers were directed to not provide language assistance to voters who were in need of that assistance. Thus, these non-English minority voters found their polling places to have ballots that were, essentially, inaccessible to them.

Marleine Bastien, a Haitian American community leader, testified at the Commission's Miami hearing that she received an overwhelming number of complaints on Election Day. She visited polling precincts that were required by county ordinance to provide bilingual ballots. Ms. Bastien was disturbed to learn that the precincts, in violation of the law, did not have bilingual ballots. Many Haitian American voters were, in effect, turned away from their polling places without the opportunity to vote.[30]

Similarly, Jackson Chin, the associate counsel at the Puerto Rican Legal Defense and Education Fund (PRLDEF), testified at the Tallahassee hearing that after a "groundswell of complaints from Latino Floridians," the PRLDEF "dispatched a team of lawyers to investigate and to assess multiple complaints."[31] PRLDEF's field investigation revealed that many eligible Puerto Rican voters were turned away from the polling places without proper language assistance. Mr. Chin expressed his surprise that counties subject to section 203 of the Voting Rights Act failed to meet their "legal obligations to guarantee meaningful electoral access to its growing Spanish-speaking language minority voters." In some counties, many Latino voters did not receive bilingual assistance.[32] PRLDEF believes that certain election practices and policies in Florida have led to widespread voter disenfranchisement of possibly several thousand Latino voters.[33]

At the Tallahassee hearing, however, the director of the Division of Elections, L. Clayton Roberts, testified that his office in fact provided posters to the supervisors of elections in Spanish and English.[34]

> The extent of what we've done on mechanics of voting is we provide posters to the supervisor of elections in Spanish and English, which are posted in the polling place that explain to voters the basics of voting; to get their ballot, take it to their voting system to vote it, if they make an error on it, they are entitled to get another ballot.[35]

Similarly, Florida Attorney General Robert Butterworth testified that approximately 11 counties have ballots in English and Spanish.[36] Attorney General Butterworth stated that preclearance counties are required to have ballots translated in both English and Spanish.[37] He also commended Dade County for its ordinance that requires ballots to be translated into Creole because of its strong Haitian community.[38] Approximately 60 Dade County precincts had ballots in both English and Creole.[39] Attorney General Butterworth nevertheless conceded the Dade County ordinance does not resolve all the language assistance issues. Butterworth noted:

> Now there might not have been enough handouts in Creole or enough interpreters there to assist, but I think at least the counties went in the right direction, and with the strong enrollment, this time the Haitian American community had a tremendous enrollment, a tremendous turnout and it appears that there may not have been enough materials for this election.[40]

Attorney General Butterworth, defended Dade County from criticisms that it was not prepared for the voter turnout on November 7, 2000, remarking:

> When you see a community like Miami-Dade attempting to reach out and do what they believe is appropriate and they miss the estimates—well, gee, all the news media missed the estimate twice when it came to Florida. But they tried to, as they predict what the election is going to be, how many machines they'll need in each precinct, they have to go by their own experience and the people in the community.[41]

After the November election and upon further reflection, Attorney General Butterworth recommended that Broward County enact an ordinance requiring Creole translation in certain precincts.[42] He conceded that so many languages are spoken in Florida that accommodations are essential.[43]

CONCLUSION

The inaccessibility of polling places—for both individuals with physical disabilities needing barrier-free access to buildings and those needing ballot accessibility—were issues presented at the Commission's Florida hearings.

It is estimated that voter participation among people with disabilities is at least 15 to 20 percent below that of the general population at large.[44] Despite the enactment of a Florida law requiring polling places to be accessible to people with disabilities, the law is not enforced and barriers that prevent individuals with disabilities from voting have not been removed at polling precincts. Credible testimony established that many voters, unable to access (enter) the precincts, returned home without voting, deprived of their voting rights. Others, while able to gain physical access to their precinct, found the booths or ballots inaccessible and were deprived of their voting rights.

Many language minority voters were also effectively prevented from casting a ballot because elections officials refused to provide bilingual ballots or assistance on Election Day, and many persons who were not literate were denied adequate assistance in casting their ballots. Remarkably, while

being denied this assistance, other language minority voters were forced to vacate the voting booth within five minutes, which is in fact provided by Florida law.[45] These failures meant that language minority voters were denied meaningful participation in the 2000 November election.

Florida's chief legal officer, Robert Butterworth, conceded that more "accommodations" must be made to enfranchise special needs voters. Butterworth noted, "We should also target those communities with the most urgent needs and Florida has communities with many urgent needs, especially language needs, people who are elderly and minority communities who are voting sometimes for the first time."[46] He added: "We have so many languages that are being spoken throughout Florida … that we have to make accommodations."[47]

Unless and until these accommodations are made, for both persons with disabilities and language minority voters, the struggles to gain the right to vote and the history of barriers being erected remain.

[1] President Clinton's Message to Congress on the Unfinished Work of Building One America, *Federal Department and Agency Documents,* Jan. 15, 2000.

[2] National Assn. for the Advancement of Colored People v. Katherine Harris, No. 01-CIV-120-GOLD (S.D. Fla. Jan. 10, 2001).

[3] *Revitalizing Democracy in Florida* , The Governor's Selection Task Force on Election Procedures, Standards, and Technology, Mar. 1, 2000.

[4] Jim Dickson, vice president of the National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 236-37.

[5] JoNel Newman, attorney for the Florida Justice Institute, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 130.

[6] There are various laws that mandate states and the federal government to achieve comparable access for individuals with disabilities or special needs. These include the Americans with Disabilities Act and the Rehabilitation Act. For example, Title II of the Americans with Disabilities Act of 1990 prohibits discrimination in the election process by state and local entities, ensuring access to the disabled and section 504 of the Rehabilitation Act of 1973 requires that state and local governments receiving federal funds ensure that their programs are accessible to persons with disabilities.

[7] 42 U.S.C. § 1973ee (1984). Prior to its passage, the few cases challenging the right to vote by individuals with disabilities were rejected on the basis that because absentee ballot voting was available, there was no requirement that polling places be accessible.

[8] An example of the proper implementation of the physical accessibility provisions of the VAEHA is found in Monroe County, Florida. The day before any election—local or national—the Department of Public Works goes to each precinct that is inaccessible and installs a temporary ramp and other modifications to ensure accessibility to those with physical disabilities.

[9] For example, in Miami-Dade, a deputy sheriff, at 7:00 a.m. on Election Day, posts a sign near the front entrance of a polling place that reads: "Voters who find the polling place inaccessible should see the Deputy Sheriff."[9] The deputy sheriff, should be "stationed near the front entrance of the polling place while the polls are open [to] watch for voters with mobility impairment" that prevents them from gaining access to the voting area. A clerk or assistant clerk is then dispatched to the curbside to confirm that the voter is properly registered and then provides a ballot card, secrecy envelope, and voting device for the voter. After the "elector [places] the ballot in the secrecy envelope" the clerk brings the ballot and voting device back to the ballot box and "with [an] inspector observing" casts the ballot into the ballot box for the individual with the disability. *See* David C. Leahy, Response to Commission's Interrogatory #6, Exhibit C, at 31. Miami-Dade also provides procedures for disabled voters requiring assistance. The voter completes a "Declaration to Secure Assistance" affidavit. The voter is then escorted with a clerk and a "person of the voter's choice to a votomatic" or has two election board members assigned to assist the voter." Ibid., Exhibit C. It is unclear from Mr. Leahy's response to the interrogatory whether the deputy sheriffs providing curbside assistance were in uniform or plainclothes. *See* Chapter Two for a discussion on police presence at or near polling places.

[10] 42 U.S.C. § 1973ee-1(a) (1984).

[11] 42 U.S.C. § 1973ee-1(c)(3) (1984).

[12] "Voters Denied Equal Access at the Polls," *A Report on the Status of Accessibility to Polling Places in the United States* , National Voter Independence Project, The New Hampshire Developmental Disabilities Council (2000).

[13] "Voters Denied Equal Access at the Polls," *A Report on the Status of Accessibility to Polling Places in the United States* , National Voter Independence Project, The New Hampshire Developmental Disabilities Council (2000), p. 6.

[14] "Voters Denied Equal Access at the Polls," *A Report on the Status of Accessibility to Polling Places in the United States* , National Voter Independence Project, The New Hampshire Developmental Disabilities Council (2000), p. 6. The report cites many examples and found in one state that a shocking 60 percent of polling places were inaccessible. Perhaps most egregious are two New York counties in which every polling place, with the exception of one, was physically inaccessible to voters with disabilities. Ibid.

[15] Jim Dickson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 204.

[16] Joy Cohen, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 115-16.

[17] Harold Cousminer, Testimony, Testimony, Miami Verified Transcript, February 16, 2001, pp. 58-60. Mr. Cousminer suggested that the disabled population votes 15 percent to 20 percent less than other communities because of the insufficient accommodations at polling places. Mr. Cousminer recommended that supervisors of elections utilize the following: (1) disability advisory groups to assess "whether the entire voting process is accessible and to determine what makes a polling place or ballot inaccessible"; (2) a polling place access guide provided by the National Task Force on Election Accessibility; (3) buildings already deemed accessible for polling places; (4) signs to direct people to disabled accessible entrances; (4) wheelchair accessible voting booths; and (5) larger print ballots for the visually impaired. Ibid., pp. 62-65.

[18] Fred Shotz, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 20-25. Dr. Shotz stated that he was not offered the accommodation to which he was accustomed at his polling place for the November 7, 2000 election. Dr. Shotz described his experience as follows:

And then, much to my surprise, the accommodation I've been given in the past to have the voting platter placed on a table for me where I could actually see to vote was denied with the excuse being, "We have no spare tables and we are too busy today." But there was a votomatic machine with a wheelchair symbol taped to the machine. And somebody had actually lowered two of the legs to make it at wheelchair accessible height, but the machine has four legs, not two. So the front of the machine was higher than the back of the machine causing it to tilt away from me and making it almost impossible to see the ballot. The legs were not wide enough apart for my wheelchair so I could not sit close to the machine.

I fortunately was able to use my arms to lift myself up and attempt to read the ballot and to cast my vote. I have the strength in my arms to do that. Many people that use

wheelchairs do not.

Fred Shotz Testimony, Miami Verified Transcript, pp. 24-25. Although some may propose that absentee ballots are a reasonable accommodation to people with special needs, Dr. Shotz testified that while absentee ballots may provide access to the voting process, it does "not provide equal access for people who want to vote on Election Day." Fred Shotz Testimony, Miami Verified Transcript, p. 20.

[19] Felix Boyle, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 97.

[20] Robert Butterworth, Florida attorney general, Letter to Addressee, "Ballot in Palm Beach County," Nov. 8, 2000, 0010150.

[21] Fred Shotz, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 35.

[22] Miriam M. Oliphant, supervisor of elections for Broward County, Response to Commission's Interrogatory #1, Apr. 16, 2001.

[23] Miriam M. Oliphant, Response to Commission's Interrogatory #1.

[24] It is estimated that over twenty-three million Americans speak languages other than English in their homes. *See* Bureau of the Census, U.S. Department of Commerce, Statistical Abstract of the United States 40 (1996).

[25] 42 U.S.C. 1973b(f)(1) (1994).

[26] 42 U.S.C. § 1973aa-1a (1994). The Voting Rights Act defines "language minorities" or "language minority groups" as persons who are "American Indian, Asian American, Alaskan Natives or of Spanish heritage." 42 U.S.C. §1973(c)(3) (1994).

[27] 42 U.S.C. § 1973b(f)(4) (1982). The 1975 amendments to the Voting Rights Act of 1965 provide that in any jurisdiction covered by the Act "[w]henever any [jurisdiction] . . . provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," it shall provide them on a multilingual basis to members of applicable language minority groups.

[28] 42 U.S.C. § 1973aa-1a(b)(2)(A) (1994).

[29] 42 U.S.C. § 1973aa-1a(c) (1994). This provision compels "any State or political subdivision subject to [42 U.S.C. § 1973aa-1a(b) to] provide[] any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, … in the language of the applicable minority group as well as in the English language.

[30] Marlene Bastien, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 25-28.

[31] Jackson Chin, associate counsel for the Puerto Rican Legal Defense and Education Fund, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 197.

[32] Jackson Chin, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 200-01.

[33] Jackson Chin, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 198.

[34] L. Clayton Roberts, director of the Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 286.

[35] L. Clayton Roberts, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 286.

[36] L. Clayton Roberts, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 286.

[37] Robert Butterworth, Florida attorney general, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 218.

[38] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 218.

[39] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 218.

[40] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 218.

[41] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 218.

[42] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 220.

[43] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 219.

[44] Genevieve Cousminer, coordinator of Advocacy Services for the Coalition for Independent Living Options, Miami Verified Transcript, February 16, 2001, p 62.

[45] Fla. Stat. ch. 101.51 (1999).

[46] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 201.

[47] Robert Butterworth, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 219.

Chapter Seven

Casting Ballots

PROVING YOU SHOULD BE PERMITTED TO VOTE

In the 2000 presidential election, many people arrived at their polling places expecting to cast their ballots for the candidates of their choice, but many left frustrated after being denied this right. This chapter focuses on the mechanisms provided by the Florida election law that aim to allow potential voters' voices to be heard when problems arise at the polling places or to cast votes when they are unable to be at their designated polling places on Election Day. In Florida, affidavits are used to cure problems arising at the polling place, while absentee ballots are used when the voter cannot physically be at the polling place on Election Day.

The Use of Affidavits

The Florida Election Code authorizes voting after an affidavit is executed when there is doubt that a person who seeks to vote is registered, yet that person is willing to swear that he or she did in fact register to vote. Although the use of affidavits seems to be available to cure a large number of situations, it does not remedy situations most often presented to the Commission—when the local poll workers were unable to reach supervisor of elections.[1] In those cases, the individuals were denied the right to vote. At the time of the November 7 election, Florida law did not allow "provisional" balloting.[2] With a provisional ballot, a person is allowed to actually cast a ballot for the candidate they choose, but the ballot is not counted until the eligibility of the voter is determined.[3]

The Florida Election Code provides for affidavit voting in the following circumstances:

- **Discrepancy Between Signatures** - Under Florida law individuals can vote if they identify themselves as duly qualified electors by signing an identification slip.[4] The election clerk compares this signature to the signature in the precinct registration book. If the official is satisfied that the signature is the same, the person is permitted to vote.[5] If the election official has doubts that the signature is actually that of the person attempting to vote, the person may be permitted to vote if they execute an affidavit.[6]
- **Change Of Address** - An elector who moves from one precinct to another precinct within the county in which the elector is registered may be permitted to vote in the precinct which is the legal residence at the moment of voting, provided the elector completes an affidavit providing information as to where he or she is legally registered to vote.[7]
- **Change Of Name** - An elector whose name changes because of marriage or other legal process may be permitted to vote if he or she completes an affidavit providing information as to the name under which the elector is legally registered to vote.[8]
- **Assistance By Reason Of Disability** - An elector who requires assistance because of "blindness, disability, or inability to read or write" is entitled to vote if the elector executes an affidavit attesting to this need for assistance.[9]
- **Challenged Ballots** - Affidavit is used to allow an individual to vote occurs when another elector, or an observer, challenges the right of the person to vote.[10] The challenger is required to swear that the reasons given for the challenge are true.[11] The challenged elector then executes an affidavit stating that he or she is authorized to vote.[12] If the voter executes the affidavit, the election officials will decide by a majority vote whether the challenged person may vote.[13]
- **Elector's Name Does Not Appear On The List** - When an elector's name does not appear listed in the registration books of the election precinct where the elector is registered, and when the elector cannot present a valid registration identification card, the elector may have his or her name restored, *if the Supervisor of Elections for the county where the voting poll is located authorizes the vote.* [14]

Florida permits affidavits to be used to cure many situations where a potential voter could be denied the right to vote. Florida Election Code § 101.111 would conceivably solve many problems that disenfranchise voters. This provision permits an individual to be issued a ballot even if the person's name does not appear on the precinct register and the voter cannot present a valid registration identification card. This person can be restored to the registration lists and be permitted to vote only "if the supervisor is otherwise satisfied that the voter is validly registered, that the voter's name has been erroneously omitted from the books, and that the voter is entitled to have his or her name restored…."[15]

Under these statutory provisions tremendous discretion is vested in the supervisor of elections. If the supervisor is not satisfied with the individual's voting eligibility then the person's right to vote is denied. Equally important, the law vests the supervisor, no one else, with power to permit an individual to vote. If the supervisor cannot be contacted, the right to vote is denied. As discussed more fully in Chapter Two, one of the biggest problems during the November 7 election was the great difficulty contacting election supervisors.

A Provisional Ballot

Some election officials in Florida may have unduly restricted the use of affidavit voting when faced with mounting confusion over confirming the eligibility status of voters on Election Day. For example, if the name of an eligible voter did not appear on the voter registration list at a polling place due to governmental inefficiency or error, that person would not have an opportunity to cast a ballot that could be held until it was confirmed at a later time that person was eligible to vote. The officials maintain that under the law once a ballot is cast as authorized by affidavit ballot, it is indistinguishable from the ballot of individuals on the registration list. They emphasize that if it is discovered that the information in the affidavit is false, there is no mechanism to annul the fraudulent vote. Anyone submitting a false affidavit regarding his or her ability to vote, however, would be subject to criminal prosecution. On the other hand, there is no remedy for the eligible voter who was wrongly denied an opportunity to vote due to the government's inefficiency or error. The lack of sufficient training of poll workers notably contributed to the problem of confirming the eligibility status of registered voters whose names did not appear on lists at certain polling places.[16]

One solution to help protect the rights of registered voters is the provisional ballot, which was signed into law by Governor Bush in May 2001.[17] A provisional ballot is issued to a voter at a polling place if there is a question about the voter's eligibility. The purpose of provisional ballots is that those who are eligible to vote be allowed to do so, and at the same time protect the integrity of the elections by not counting the provisional ballots of those persons not qualified to vote. If the election official issues a provisional ballot, the voter's ballot is usually sealed in a special provisional voter's envelope that the voter signs under penalty of perjury. The voter states his or her eligibility to vote, and the inspector notes the reasons for issuing the provisional ballot on the envelope. Such "provisional ballots" are not opened until the voting officials research the registration information and the voter is determined to be eligible to vote. This research occurs during the official vote count, during the days immediately following the election. Eligible ballots are added during the vote count period.

Ion Sancho, Leon County supervisor of elections, testified to the advantages of a provisional ballot:

> Well, let me give you the experience in Hillsborough County, [where]…I visited. It's a wonderful county who added 40 [telephone] lines. There are going to be times when I don't care if you add 40 lines…, it's not enough. Which is one of the reasons why in our legislative meeting in Tampa on December 12th, the supervisor of the legislative committee has made a recommendation…that we will present to the legislature this spring. So let's go to [a] provisional ballot because we recognize that under certain elections, I don't care if you add 50 lines,…you're not going to be able to deal with all you need to. And the other aspect of that is, do you have 50 trained individuals who know intimately all of that intricacies of the Florida election law that would be able to answer the person's problem?[18]

The use of provisional balloting is not a new or unique practice. The following are a few examples of states using provisional ballots and when they can be used.

- **California -** At all elections, a voter claiming to be properly registered shall be entitled to vote a provisional ballot.[19] A provisional ballot is sealed in a special envelope and deposited in the ballot box. The color of the envelope is different from that of absentee ballots.[20] These "provisional ballots" are not counted until the registration information is researched by the Registrar's Office and the voter is determined to be eligible to vote.[21] Provisional ballots are also authorized for absentee voters who are unable to surrender their unvoted absentee voter ballots.[22]
- **New Jersey** - Any voter who, prior to an election, moves within the same county after the time prescribed for filing an application for change or residence, or without making the application for change of residence, or returned a confirmation notice, or has not moved but the registration information is missing or otherwise deficient, or has not notified change of address within the county, shall be permitted to vote in the district to which he or she has moved by use of a provisional vote.[23] After voting the provisional ballot and completing the affirmation statement the voter shall place the voted provisional ballot in an envelope.[24] The voter then hands the envelope to a member of the district board who places the envelope in the provisional ballot bag to be opened and counted at a later time if it is established that the person is entitled to vote.[25]
- **Kansas -** When a registered voter changes name by marriage, divorce or legal proceeding, if the voter is otherwise qualified to vote at the voting place such voter shall be allowed to vote a provisional ballot.[26] When a registrant moves from an address on the registration book to another address within the county and has not reregistered, such registrant is allowed to vote a provisional ballot.[27] If a person's right to vote is challenged, the person shall be permitted to vote by provisional ballot, which is opened and reviewed by the county board of canvassers, and the board determines whether to accept the vote.[28]
- **West Virginia -** A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct. He or she shall be permitted to vote a provisional ballot at the new polling place. If the voter's registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on Election Day, the ballot shall be counted.[29]

The Governor's Task Force on Election Procedures, Standards and Technology endorsed "the concept of provisional ballots as a way of encouraging votes by those whose registration status could not be clarified quickly at the polls, but also urged the Division of Elections to look carefully at various alternatives."[30]

The Use of Absentee Ballots

Although there was little testimony at the Commission's hearing regarding the use absentee ballots, a comprehensive overview of Florida's voting systems cannot overlook the statutory provisions regarding absentee ballots. The rules that apply to absentee ballots are a combination of federal, state and local laws.

Request for Absentee Ballots

The Florida Election Code provides that a supervisor of elections can only accept a request for an absentee ballot from the voter, or, if directly instructed by the voter, a member of the voter's immediate family, or the voter's legal guardian.[31] An absentee ballot request can be made in person, by mail, or by telephone. Only the voter, or a designated member of his or her immediate family, can request an absentee ballot for the voter. The person making the request must disclose: (1) the name of the elector for whom the vote is requested; (2) the elector's address; (3) the last four digits of the elector's social security number; (4) the registration number on the elector's registration identification card; (5) the requester's name; (6) the requester's address; (7) the requester's social security number and, if available, driver's license number; (8) the requester's relationship to the elector; and (9) the requester's signature.[32]

Types of Absentee Ballots

Three types of overseas absentee ballots are available in Florida in an election of federal officials. Individuals can vote absentee using a ballot authorized by the Uniformed and Overseas Citizens Absentee Voting Act of 1986.[33] This law requires that states and territories allow the following individuals to vote absentee in elections for federal offices: (1) members of the uniformed services and merchant marines; (2) their family members; and, (3) United States citizens residing overseas.[34] The administrative responsibilities for the Uniformed and Overseas Absentee Voting Act are assigned to the Secretary of Defense.[35] The attorney general has enforcement responsibilities.[36]

A second type of absentee ballot is a Florida advance ballot. A 1982 consent decree established an advanced absentee ballot that supervisors must send to overseas voters 45 days prior to the general election.[37] According to the 1982 consent decree, these overseas ballots are counted up to ten days after the general election if they are postmarked and dated by Election Day and if they have a foreign postmark. Florida Administrative Code Rule 1S-2.013(7) was promulgated as a result of this litigation, which requires a 35-day advance mailing of absentee ballots and a 10-day extension in the receipt of overseas absentee ballots in federal elections.[38]

Robert A. Butterworth, Florida's attorney general, issued an opinion that a date entered by the elector can substitute for a postmark.[39] In his view, overseas military ballots lacking postmarks but containing handwritten or notarized dates would qualify under the secretary of state's rule and should therefore be counted. During the aftermath of the November 2000 presidential election, the administrative provision implementing the consent decree was upheld over the statutory provision.[40]

Lastly, there is the standard absentee ballot. After the second primary election, an absentee ballot is sent to overseas electors; so in effect, the elector receives two ballots for each general election.

CONCLUSION

There was consistent, uncontroverted testimony regarding the persistent and pervasive inability of election poll workers to reach county supervisor offices to verify voter eligibility during the November 7 presidential election.[41] In situations where a potential voter's name does not appear on the precinct registration books, and when he or she cannot present a valid registration card, voting will be permitted only "if the supervisor is otherwise satisfied that the elector is validly registered, that the elector's name has been erroneously omitted from the books, and the elector is entitled to have his or her name restored."[42] If—as occurred in Florida—the supervisor of elections cannot be contacted, then voter eligibility cannot be verified and/or corrected on Election Day. While in many states this problem can be addressed through the use of provisional ballots, the use of such ballots was not available under Florida law on November 7, 2000, and this factor compounded the problems that led to numerous Floridians being denied their right to vote.

[1] Testifying before the Commission, Palm Beach County supervisor of elections Theresa LePore agreed with the characterization that in the "vast majority of circumstances," would-be affidavit voters needed to contact her office before being permitted to vote. Theresa LePore, supervisor of elections for Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 381.

[2] *See* Epilogue for explanation of the recent passage of provisional balloting and other voting reforms in Florida.

[3] The use of provisional balloting is discussed in greater detail later in this Chapter.

[4] Fla. Stat. ch. 101.47(1) (2000).

[5] Fla. Stat. ch. 101.47(2) (2000).

[6] Fla. Stat. ch. 101.49(1) (2000).

[7] Fla. Stat. ch. 105.045(2)(a) (2000).

[8] Fla. Stat. ch. 101.045(2)(b) (2000).

[9] Fla. Stat. ch. 101.051. (2000).

[10] Fla. Stat. ch. 101.111 (2000).

[11] Fla. Stat. ch. 101.111(1) (2000).

[12] Fla. Stat. ch. 101.111(2) (2000).

[13] Fla. Stat. ch. 101.111(3) (2000). According to George Reeves, the county attorney for Madison County, this procedure has been interpreted to be only applicable when the

person whose right to vote is challenged is listed on the registration rolls. George Reeves, county attorney for Madison County, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 68.

[14] Fla. Stat. ch. 101.045(3) (2000). While this provision does not specifically reference the use of an affidavit, it appears that in order to be satisfied the supervisor would want the elector's position in an affidavit form. According to Supervisor Sancho, poll workers are given a countywide register and special telephone numbers so they can communicate with the office of the Supervisor. When a person is not on the rolls, the clerk will look in the register to see if the person is eligible to vote. If the person is not on the list, the clerk will call the office of the supervisor of elections to verify the information before issuing a ballot. Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 72. According to Supervisor Howell, most of the situations where this provision is used involved persons who moved yet went to their former voting places to vote. Linda Howell, supervisor of elections for Madison County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 73-74.

[15] Fla. Stat. ch. 101.045(3) (2000).

[16] Fla. Stat. ch. 104.011 (2000).

[17] Please see the "Epilogue" of this report for a more in-depth discussion of the voter reform package singed into law by Governor Bush.

[18] Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 82-83.

[19] Cal. Elec. Code §14310 (a), (2001).

[20] Cal. Elec. Code §14310 (b), (2001).

[21] Cal. Elec. Code §14310 (c) (2), (2001).

[22] Cal. Elec. Code §14310 (e), (2001).

[23] N.J. Stat. §1931 (2001).

[24] N.J. Stat. § 19:53C-10 (a) (2001).

[25] N.J. Stat. § 19:53C-10 (b) (2001).

[26] Kan. Stat. Ann. § 25-2316c(a) (1999).

[27] Kan. Stat. Ann. § 25-2316c(b) (1999).

[28] Kan. Stat. Ann. § 25-409 (1999).

[29] W.VA. Code § 3-2-31(c) (2000).

[30] State of Florida, The Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida* , 2001, p. 56.

[31] Fla. Stat. ch. 101.62 (1)(a)-(b) (2000).

[32] Fla. Stat. ch. 101.62 (1)(b) (2000).

[33] 42 U.S.C. §§ 1973ff-1–1973ff-6 (2001).

[34] 42 U.S.C. § 1973ff-6 (1984). A federal write-in absentee ballot in a general election for federal offices is valid if: (1) the voter complies with the State's legal requirements concerning absentee voting; (2) the voter makes a timely request for a regular ballot that is received by the local election official at least 30 days before the election; (3) the voter has not received the regular absentee ballot in time to vote and return it; and, (4) the ballot is submitted from a location outside the United States and its territories. Fla. Stat. ch. 101.67 (2000).

[35] Executive Order No. 12642, 53 Fed. Reg. 21975 (June 8, 1988).

[36] 42 U.S.C. § 1973ff-4 (2001).

[37] Harris v. Florida Election Canvassing Comm'n, 122 F. Supp. 1317, 1324 (2000) (citing United States v. Florida, No. TCA-80-1055 (N.D. Fla. 1982)).

[38] Fla. Admin. Code Ann. r. 1S-2.013 (7)-(8) (2000). This administrative provision is contrary to section 101.67(2) of the Florida Election Code, which states that the supervisor must receive all marked absent electors' ballots to be counted by 7:00 p.m. the day of the election. All ballots received thereafter shall be marked with the time and date of receipt and filed in the supervisor's office.

[39] State of Florida, Robert F. Butterworth, attorney general of Florida Fact Sheet regarding consent decrees regarding absentee balloting in the State of Florida (November 21, 2000).

[40] Harris v. Florida Elections Canvassing Comm'n, 235 F.3d 578 (2000).

[41] *See* Chapter Two discussion.

[42] Fla. Stat. ch. 101.045(3) (2000).

DRAFT STAFF REPORT ON

Voting Irregularities in Florida During the 2000 Presidential Election

(Not Official Unless and Until Approved by a Majority of the Commissioners)

Chapter Eight

The Machinery of Elections

> *As long as ours is a representative form of government . . . the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.* [1]

Florida lacks a unified voting system for its 8.4 million voters. Each county is authorized to select its voting method from the list of systems certified by the secretary of state and the state Division of Elections.[2] The federal role has been extremely limited. While Federal Election Commission (FEC) standards govern all voting systems other than paper ballots and lever machines, state adherence to the standards is completely voluntary. Douglas Jones, associate professor of computer science at the University of Iowa, and chair of the Iowa Board of Examiners of Voting Machines and Electronic Voting Systems, says the FEC's standards are "far from perfect, they are significantly out of date … and the number of states that don't even write any reference to the standards into their state law governing voting machines is embarrassing."[3]

THE MACHINES

There are five voting systems used in Florida's 67 counties: punch cards (24 counties), optical scan *central tabulation* (16 counties), optical scan *precinct tabulation* (25 counties), paper ballot (one county), and machine lever (one county).[4]

Punch Cards

Punch cards were developed for data processing in the 1890s, and they began being used as ballots in 1964. After the polls close, the ballots are counted at a central counting center using an industry-standard punch card reader attached to a computer system. Because the punch card is a physical ballot, any questions about the correctness or accuracy of the vote-counting software can be resolved—or attempt to be resolved—by a hand recount of the ballots.[5]

Optical Scan Central Tabulation

In this system, a ballot card has candidates' names pre-printed next to an empty oval, circle, rectangle, or an incomplete arrow. A voter records his or her choices by filling in the empty oval, circle, or rectangle or by completing the incomplete arrow with a pencil. After the polls close, the ballots are sent to a central location for counting by a high-speed reader.[6] Like the punch card, because physical ballots are used, questions about how the vote is tabulated can be resolved by reviewing the ballots.

Optical Scan Precinct Tabulation

This is the same system as the Optical Scan Central Tabulation system described above, except that once the voter is finished completing the ballot, it is fed into a tabulating device at the precinct. Because the machine can be programmed to "kick out" ballots that have been voted incorrectly, a voter has the opportunity to immediately correct any errors before he or she leaves the precinct.[7]

Paper Ballot

The voter takes one of the paper ballots and makes a mark next the candidate(s) of his or her choice—the only requirement is that any ballot containing a clear indication of the voter's intent be counted.[8] If properly used, the paper ballot system sets a standard for fair and honest elections that is not easy to match with more recent voting technologies. Paper ballots may be transported to a counting center, or they may be counted at the precinct immediately after the polls close.[9] An honest count is ensured by having each ballot inspected by two election workers, representing opposing parties, with observers from opposing parties allowed to watch over their shoulders. If there is any doubt about the count, it may be resolved by a recount.[10]

Machine Lever

Lever machines completely eliminate the problems of ballot interpretation that accompany paper ballots. In addition, lever machines contain interlocks preventing voters from selecting too many candidates—an overvote—which invalidates the ballot. However, counters in lever machines are extremely complex, with thousands of moving parts. Exhaustive tests of these counters are difficult and therefore rare, and the vote counts obtained from these machines are only as trustworthy as the technicians who maintain them.[11]

VOTES IN COMMUNITIES OF PEOPLE OF COLOR LESS LIKELY TO BE COUNTED

The Governor's Select Task Force on Election Procedure, Standards and Technology stated in its March 1, 2001, report that error—or "spoilage"—rates in Florida's November 7 general election varied widely by type of voting system. The report concluded:

> In statewide or national elections, when different kinds of voting systems with different error rates are used, every voter does NOT have the same chance to have his or her vote counted accurately.[12]

The Select Task Force continued that "[u]sing different systems with different 'spoilage' rates for voters in the same statewide or national elections creates substantial questions about equal protection."[13]

The available statistical evidence indicates that Florida voters in poorer, predominantly people of color communities were more likely to use voting systems with higher spoilage rates—meaning those voters had a lower chance of having their votes counted accurately. For example, Gadsden County, which used an optical *central* tabulation system, had a spoilage rate of 12.4 percent. Just on the other side of the Ochlockonee River, in Leon County, which used an optical *precinct* tabulation system, the spoilage rate was only 0.18 percent.[14]

Gadsden County had the highest spoilage rate in the state. In addition to being rural and poor, it is also approximately 63 percent African American—the only county in the state with an African American majority.[15] On November 7, approximately one in eight Gadsden County voters was effectively disenfranchised. Leon County, on the other hand, which is approximately 28 percent African American, had the lowest spoilage rate in the state. It is the home of the prosperous state capital and two state universities. There, fewer than two votes in 1,000 were not counted.[16]

Other studies show a similar relationship between race and discounted votes.[17] The *New York Times* conducted a study of voting systems in Florida and concluded that "the majority of the state's African American voters…cast their ballots on punch cards that are more prone to voter error and miscounts." [18] The *Times* study found that, across the state, nearly 4 percent of the type of punch card ballots most widely used in Florida were thrown out because the machines read them as blank or invalid.[19] Ion Sancho, who has served as supervisor of elections for 12 years in Florida's Leon County, testified that approximately 90,000 people were disenfranchised in the punch card jurisdictions due to "failure in voter technology, failure in training the citizens to vote in those technologies, and failure to administer the process properly…."[20]

By contrast, the more modern, optical scanning systems rejected far fewer votes—only about 1.4 percent of those cast.[21] And while 64 percent of the state's African American voters live in counties that used the punch cards, only 56 percent of whites do so. The *Times* reported:

> The impact of these differences on the outcome [of the presidential race] will never be known but their potential magnitude is evident in Miami-Dade County, where predominantly black precincts saw their votes thrown out at twice the rate as Hispanic precincts and nearly four times the rate of white precincts. In all, 1 out of 11 ballots in predominantly black precincts were rejected, a total of 9,904.[22]

A study conducted by the *USA Today* and *Miami Herald* newspapers concluded that, "Voters in Florida's majority-African American precincts were nearly four times as likely to have their presidential election ballots invalidated than voters in precincts that are overwhelmingly made up of white voters."[23] The study also found that among the 100 precincts with the highest numbers of disqualified ballots, 83 of them are majority-African American precincts.[24]

Governor Bush's Select Task Force stated that while "[s]ome voter errors are caused primarily by uneducated, uninformed, or disinterested voters,…the error rates for those reasons seem to be less than 1 percent."[25] It said that the large differences found in error rates for different kinds of voter systems "appear to be *directly* related to the type of equipment used."[26] The report went on to say that "[t]he differences in error rates among various kinds of voting systems are much too high to be accounted for solely by uneducated, uninformed or disinterested voters."[27]

That conclusion by the Governor's Select Task Force appears to be buttressed by a recent congressional study produced by the staff of Representative Henry A. Waxman, a ranking member of the Committee on Government Reform. The study documented how voting results were affected in the city of Detroit by a switch in voting technology combined with voter education on how to use the new machine.[28]

The report analyzed precinct-level results for Detroit for the 1996 and 2000 presidential elections. It was determined that the number of Detroit voters whose ballots were invalidated decreased nearly two-thirds—from 3.1 percent to 1.1 percent—after the city switched from punch card to optical-scan machines that warn of errors and allow an immediate re-vote.[29] Moreover, the report stated that the reduction in the undercount was especially large in precincts with high rates of uncounted votes in 1996: Precincts that had over 7 percent uncounted votes for president in 1996 had less than 1 percent uncounted votes in 2000.[30]

PRECINCT-BASED COUNTING SYSTEMS

There was testimony at the Commission hearings to indicate that using precinct-based counting (PBC) systems—or counting mechanisms placed at each polling site—dramatically decreases spoilage rates.[31] PBC systems count ballots as they are cast. If a voter improperly votes for too many candidates (i.e., if he or she "overvotes"), the PBC system can be programmed to reject the invalid ballot. The ballot can then be set aside and the voter can be given another chance to cast a valid ballot. [32]

Dan Gloger, an expert on voting machinery with Melbourne Technical Services in Melbourne, Florida, testified that when PBC systems were used,

the drop off rate[33] in those jurisdictions was 0.8 percent. However, when PBCs were not used—meaning when voters were not informed they had cast an invalid overvote ballot—the drop off rate rose to 4.8 percent.[34] Commissioner Christopher Edley, Jr., asked, "So the effect of having the overvote protection was essentially to give four percent of the voters back their franchise."[35] "That's correct," responded Election Data Services machine expert Kimball Brace.[36]

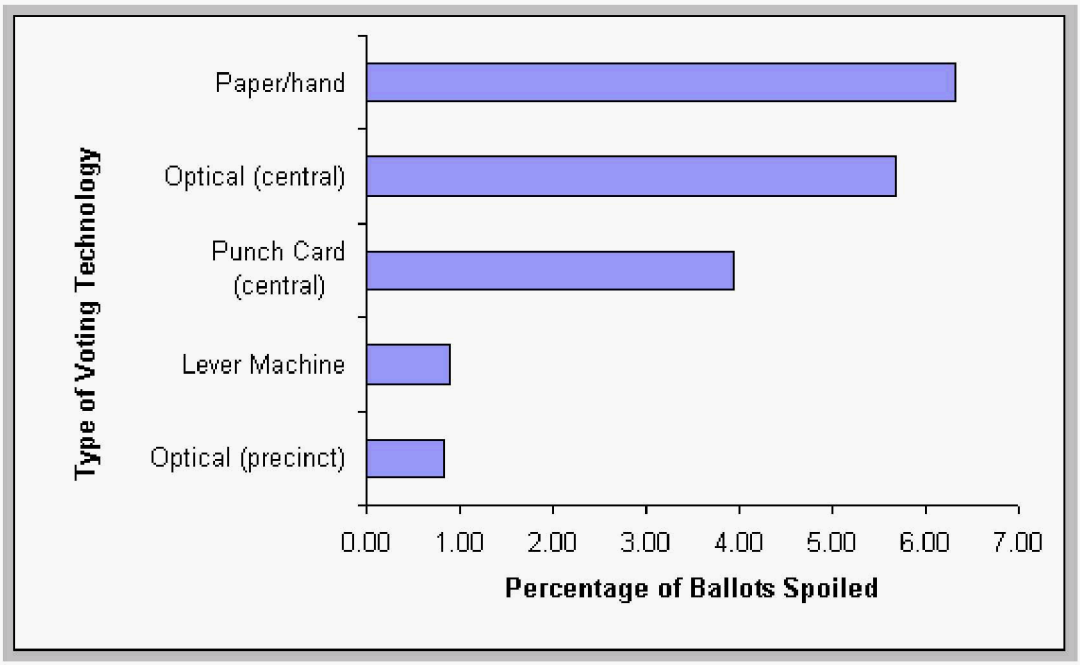
Ion Sancho, who has served as supervisor of elections for 12 years in Leon County, arrived at the same conclusion in his testimony before the Commission:

> There was a failure for voting systems in Florida, but it went far beyond punch cards and chads that we saw highlighted by the media. Voters who cast their ballots in the presidential race and then had those ballots tabulated at some central or regional location lost their votes at a rate four to five times higher than voters who voted in counties that used precinct-based counting technology. Why? Because precinct-based voting systems allows the voters to correct any overvote errors they may have made.[37]

County election supervisors from both Monroe and Leon counties use precinct tabulation systems, (the "AccuVote" system is used in both counties), and both election supervisors speak very highly of the machines.[38] Leon County Supervisor of Elections Ion Sancho, whose county had the lowest spoilage rate in Florida at 0.18 percent, is particularly enthusiastic about the system. He called it "the simplest voting system in use in the United States of America"[39] and said the technology it uses (precinct-based optical scan technology) is "the only one that accurately reflected the will of the voters in the state of Florida."[40]

Statistical data appears to bolster these favorable opinions: On average, the spoilage rate for counties using the precinct-based optical scan technology was 0.83 percent—far lower than the average spoilage rates for either central-based optical scan technology (5.68 percent) or central-based punch card technology (3.93 percent). Put another way, 22 of the 23 counties with the lowest spoilage rates used precinct-based optical scan technology (the one remaining used lever machines).[41]

Chart 8-1: Percentage of Spoiled Ballots by Voting Technology



Source: Figure generated by U.S. Commission on Civil Rights staff, based on *Orlando Sentinel Survey* as updated by Collins Center for Public Policy, Inc.

BALLOT CONFUSION

Closely related to the equipment issue is ballot design and its effect on accurately counting votes. In Florida's November 7 general election, there were ten candidates eligible to be listed on the ballot for President—compared with only three or four in previous years. Across the state, elections officials wrestled with ways to get more names into the available space.[42]

Palm Beach County

Theresa LePore, supervisor of elections in Palm Beach County, decided that since tens of thousands of her voters were elderly, she would not be able to solve the problem by using extremely small typeface.[43] Instead, Ms. LePore decided to place the names on two facing pages, with punch holes running down the center, and arrows pointing from the names to the holes.[44] Wing-like in appearance, the ballot came to be known as the "butterfly ballot."[45]

When the ballot cards were fed into the voting machines, some voters said the holes did not line up with the arrows. Moreover, there was confusion because the hole for Reform Party candidate Patrick J. Buchanan was the second hole down the center of the ballot, between the holes for George W. Bush and Al Gore—this despite the fact that Bush and Gore were listed first and second on the left-hand side of the ballot. The result was that, in Palm Beach County, which has 337 Reform Party members, Buchanan received 3,407 votes—four times higher than the next highest county vote total he received in the state.[46] Even Buchanan acknowledged that he ordinarily would not have won so many votes in heavily Democratic Palm Beach County.[47]

Moreover, more than 19,000 Palm Beach County voters punched two separate holes when voting for President, thereby invalidating their ballots with an "overvote."[48] That means that approximately 63 percent of the 29,702 spoiled ballots found in Palm Beach County were "overvotes."[49] According to Kimball Brace, the election machine expert from Election Data Services, this "extremely high" percentage of overvotes is "just the opposite of what we normally observe," which is five percent or less of the spoiled ballots.[50] Mr. Kimball testified that the high number of "overvotes" cast indicates confusion on the part of voters. [51] Based on this expert testimony, it appears clear that the Palm Beach County "butterfly ballot," designed by Ms. LePore's office, led to the invalidation of thousands of ballots.

Before the November 7, 2000, election took place, the so-called butterfly ballot was shown to the major party county chairs and to campaign officials for every candidate. Ms. LePore stated that none of those campaign officials objected to the ballot's design.[52] However, after the election, the Commission heard testimony from the following witnesses, all of whom severely criticized the ballot design:

Witnesses Confirm Confusion

Joanna Carbone testified that she took her children to vote with her on November 7. She and her 14-year-old daughter entered the polling booth together. Ms. Carbone testified:

> We placed our ballot into the little slot, lined up the red pegs and proceeded to select our candidates. At first glance it looked like Al Gore was the second hole to be punched, so we punched the second hole….Upon a second glance, a third look, a fourth, "What have I done," I realized that the second hole was for Pat Buchanan.[53]

Ms. Carbone said she took her ballot to a poll worker and asked for a second ballot, telling him she made a mistake. The poll worker said, "No, just take that ballot and place it into the box."[54] Ms. Carbone said she had "no reason to question" the poll worker because she "thought he knew his job."[55] Several days later, Ms. Carbone learned that, by law, she was allowed up to three ballots in casting her vote.[56] Testifying that her "civil and Constitutional rights were violated," Ms. Carbone said she "went from being upset to angry to outraged."[57] It is impossible to know the number of voters who, like Ms. Carbone, alerted poll workers of making ballot mistakes but were nevertheless directed to place the invalid ballots into the box. However, there was testimony from a poll worker who *did* know the law—that voters are allowed up to three ballots in casting a vote—and who replaced 68 ballots in his precinct alone on Election Day.[58]

Jim Dickson is vice president of the National Organization on Disability. Mr. Dickson, who is legally blind, testified that the butterfly ballot was a "classic case of blaming the victim."[59] He testified that while Palm Beach County elections supervisor Theresa LePore said she designed the butterfly ballot to provide assistance for voters with low vision, and that

> [LePore] not only failed to request the assistance of those who know how to develop effective large print media, but she consistently rebuffed the offers from activists in her county to provide assistance.[60]

Mr. Dickson explained that persons with low vision often experience difficulty with "tracking" on ballots with columns, and he said the butterfly ballot "took what would have been a two column problem and made it into a five column problem."[61] He concluded the ballot was "absolutely irresponsible to say the least."[62] At the Commission's Miami hearing when Ms. LePore was told of Mr. Dickson's testimony, she stated that

> to my knowledge, nobody contacted my office to offer assistance. I had contacted other agencies, not with regard to the sight problem with the ballot, but as far as the language, and received no response in, you know, trying to go out and ask for assistance….[63]

Rabbi Richard Yellin is a rabbi of a 2,800-member synagogue—"the largest retiree synagogue in Florida, maybe in the United States."[64] The Rabbi testified there were so many voting problems in his synagogue-precinct that he "summoned the supervisor and…told her that the precinct should be closed until an announcement was made to all of those voting that the butterfly ballot was problematic."[65]

Rabbi Yellin reported that many of the people at his synagogue told him they mistakenly voted for Patrick J. Buchanan. The Rabbi testified: "In my synagogue there's more than 100 Holocaust survivors. There's no way that anybody in my congregation would have voted or cast a vote for Buchanan."[66] He said that of the approximately 1,100 elderly Jewish voters with whom he had contact shortly after the election, 20 percent of them "had the same misprinted, misaligned experience in their voting booth."[67] The Rabbi testified that these individuals were "experienced" voters who turn out over 90 percent of the time and who "don't make mistakes."[68]

Testifying that the ballot's "arrows did not line up with the holes," Rabbi Yellin provided the Commission with an official copy of what he called a "misprinted" voting booklet containing "a total mistake in the instructions."[69] The Rabbi concluded that "[b]ecause of negligence of the Palm Beach County election authorities who permitted the use of tainted machines and brochures to confuse the electorate, the nation ridiculed Palm Beach County citizens."

Duval County

Testimony indicated there was confusion with the ballot in Duval County. The list of presidential candidates was spread over two pages, and voters were only permitted to vote for one candidate. Some people, however, voted for one candidate on each of the two pages, thereby invalidating their ballot with an overvote. Moreover, this problem was exacerbated by the fact that the sample ballot in Duval county explicitly instructed people to "vote all pages" of the ballot, leading to thousands of spoiled ballots.[70] Kimball Brace, the expert on election machinery from Election Data Services, testified that of the 26,909 spoiled ballots found in Duval county, 81 percent—or 21,796—were "overvotes,"[71] mistakes Mr. Brace attributes to voter confusion.[72]

CONCLUSION

During Florida's November 7 presidential election, different kinds of voting systems, with different error rates, were used throughout the state. There is compelling evidence indicating that voters in poorer, predominantly people of color communities were more likely to have voting systems with higher spoilage rates. Voters in poorer, heavily people of color communities therefore had a decreased chance of having their votes counted accurately—or counted at all.

It is also clear that Florida voters who cast their ballots and then had those ballots tabulated at a central location were more likely to lose their vote through a spoiled ballot than were voters who used precinct-based counting (or PBC) technology. PBC voting systems reject invalid ballots and allow voters to correct overvote errors right at the polling station. In fact, in Florida, 22 of the 23 counties with the lowest spoilage rates used PBC technology (the one remaining used lever machines).[73] There is strong evidence that whatever voting system(s) Florida uses in future elections, incorporating PBC technology will significantly increase the chances that a voter will have his or her vote count and be counted.

Finally, the evidence demonstrates there was substantial voter ballot confusion during Florida's November 7 election which led, in some jurisdictions, to unprecedented numbers of invalidated ballots through "over-voting." The majority of the complaints were registered in Palm Beach and Duval counties. In Palm Beach County, the so-called "butterfly ballot" caused people to mistakenly vote for the wrong candidate and to complain of a "misprinted, misaligned experience in their voting booth."[74] A representative of the National Organization on Disability—a person who is legally blind—concluded the butterfly ballot's design was "absolutely irresponsible" when it came to persons with visual impairments.[75] And in Duval County, the ballot spread presidential names over two pages, leading thousands of voters to invalidate their ballots by voting on both pages—a problem compounded by the fact that the sample ballot explicitly instructed people to "vote all pages" of the ballot.

While nothing can be done to restore votes lost by Florida voters in the November 7 election due to machine disparities and ballot design flaws, the Commission believes that illuminating and cataloguing these various difficulties can prevent their recurrence in Florida and elsewhere.

[1] Reynolds v. Sims, 377 U.S. 533, 562 (1964).

[2] The secretary of state is required to examine all makes of electronic or electromechanical voting systems to determine if they comply with state law. The director of the Florida Division of Elections is responsible for adopting uniform rules for the purchase, use, and sale of voting equipment in the state and for voting system standards and certification. *See* Fla. Stat Ann. §§ 101.28, 101.5605.

[3] Douglas Jones, associate professor of computer science at the University of Iowa, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 282. Florida is one of the 31 states that has adopted the FEC's voting system standards. *See* Revitalizing Democracy in Florida, The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 43.

[4] Douglas Jones also stressed that regardless of what system is used, "We must not trust any particular participant, mechanism or computer program; in fact, we must expect every participant, the maintainer of every mechanism, and the designer of every computer program to be a partisan." Douglas Jones, Associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates Nos. 0003399–0003400.

[5] Douglas Jones, associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates Nos. 0003402–0003404. Punch card voting was hailed as a big step forward when it was invented in 1962. The basic technology drew on the punch card readers that stored data for IBM mainframe computers. Its advantage was that it tallied the cards quickly. However, it was soon discovered that the tiny pre-perforated rectangles—called "chads"—do not always fall away from the cards. And when they stick—whether it becomes a hanging chad, a swinging chad, or a dimpled or pregnant chad—they can obscure the holes, making the votes unreadable by the counting machines. *See* David Von Drehle, et. al., "A Wild Rid Into Uncharted Territory: Two Candidates Caught a Whiff of Defeat—and Then Rapidly Mobilized for a Recount War," *The Washington Post* , Jan. 28, 2001, p. A1.

[6] Douglas Jones, Associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates Nos. 0003404–0003406.

[7] It is clear, however, that simply having this "kick out" feature on a voting machine does not guarantee the feature will actually be *activated* during the voting process. Both the Florida counties of Escambia and Manatee had machines with "kick out" capacity during the November 2000 presidential election, but the feature was turned off in order to save money and speed up voting lines. As a result, approximately 5,400 flawed ballots that might have been corrected were thrown out. *See* Roger Roy and David Damron, "New System Fumbles Votes, Optical-Scan Machines Tossed Out Thousands of Ballots in 2000, Denying Voters A Second Chance," The Orlando Sentinel, May 6, 2001, p. A1.

[8] Douglas Jones, associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates No. 0003401.

[9] Douglas Jones, associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates No. 0003401.

[10] Douglas Jones, associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates Nos. 0003404–0003406.

[11] Douglas Jones, associate professor of computer science at the University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, 0003402. Furthermore, because there are

no physical ballots, if there is any suspicion of malfunction or tampering, there is nothing to recount. When people speak of a recount with lever machines, they are speaking of repeating the tabulation of the canvass of the election, starting with the totals in the machines. This can correct errors in tabulation and transcription, but it cannot verify that the machines did, in fact, operate correctly. Ibid.

[12] The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 36.

[13] The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 36.

[14] *See* Appendix I, "Population and voting characteristics of Florida counties, ranked by percentage of votes spoiled." *See also* The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, Chart 4, "Lost Votes? Blank or spoiled ballots in the last presidential election, by percentage," pp. 31-32.

[15] Shirley Knight, supervisor of elections for Gadsden County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 31.

[16] *See* Appendix I, "Population and voting characteristics of Florida counties, ranked by percentage of votes spoiled."

[17] *See* Chapter One discussion.

[18] Josh Barbanel and Ford Fessenden, "Racial Pattern in Demographics of Error-Prone Ballots," *The New York Times*, November 29, 2000, p. A19. *See also* Gore and Lieberman v. Harris, 772 So. 2d 1243, 1258 (Fla. 2000), where the Florida Supreme Court states:

the record shows voter error, and/or, less than total accuracy in regard to the punch card voting devices utilized in Miami-Dade and Palm Beach counties, which these counties have been aware of for many years….

[19] Josh Barbanel and Ford Fessenden, "Racial Pattern in Demographics of Error-Prone Ballots," *The New York Times*, November 29, 2000, p. A19. Mr. Sancho testified further that Florida "spends not one dollar on radio and TV ads informing voters how to vote. This in a state that in the past has spent over $35 million in one year telling Floridians how to play the lottery." Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 17-18.

[20] Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 16.

[21] Josh Barbanel and Ford Fessenden, "Racial Pattern in Demographics of Error-Prone Ballots," *The New York Times*, November 29, 2000, p. A19. *See also* Siegel v. LePore, 234 F.3d 1163, 1215-1218 (11th Cir. 2000), in which the court presents data indicating that the percentage of ballots recorded as having no vote in Florida counties using a punch card system was 3.92 percent, while the error rate under the optical-scan systems in use elsewhere in Florida was 1.43 percent (charts C and F).

[22] Josh Barbanel and Ford Fessenden, "Racial Pattern in Demographics of Error-Prone Ballots," *The New York Times*, November 29, 2000, p. A19. The *Washington Post* conducted a precinct-by-precinct analysis of Florida's spoilage rates and came to a similar conclusion. According to the *Post*, in those Miami-Dade County precincts where fewer than 30 percent of the voters are African American, about 3 percent of ballots did not register a vote for president. However, in the same county, in those precincts where more than 70 percent of voters are African American, the number of ballots not registering a vote for president rose to nearly 10 percent. In addition, the *Post* determined that as many as one in three ballots in African American sections of Jacksonville (part of Duval county) did not count in the presidential contest. That was four times as many as in white precincts elsewhere in the same county. Concluded the *Post*: "Heavily Democratic and African American neighborhoods in Florida lost many more presidential votes than other areas because of outmoded voting machines and rampant confusion about ballots." John Mintz and Dan Keating, "Spoilage Likelier for Blacks," *The Washington Post*, December 3, 2000, p. A1.

[23] Laura Parker and Peter Eisler, "Ballots in Black Florida Precincts Invalidated More," *USA Today*, Apr. 6, 2001, p. A1.

[24] Laura Parker and Peter Eisler, "Ballots in Black Florida Precincts Invalidated More," *USA Today*, Apr. 6, 2001, p. A1.

[25] The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 36.

[26] The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 36. Testimony was presented before our Commission that error rates can also be influenced by how equipment is maintained. For example, Jim Smith, co-chair of the Governor's Task Force on Election Procedures, Technology and Process, testified that some of the voting machines are more than 30 years old and, in Dade County, "one reason they had a significant problem with chads is the machines hadn't been cleaned, maybe ever." Jim Smith, co-chair of the Governor's Task Force on Election Procedures, Technology and Process, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 166-167.

[27] The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, p. 37.

[28] *See* "Election Reform in Detroit: New Voting Technology and Increased Voter Education Significantly Reduced Uncounted Ballots," Minority Staff, Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, Apr. 5, 2001.

[29] "Election Reform in Detroit: New Voting Technology and Increased Voter Education Significantly Reduced Uncounted Ballots," Minority Staff, Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, Apr. 5, 2001, pp. 5-6. The city of Detroit spent nearly $100,000 to introduce voters to the new system. This included: (1)demonstrations in community centers, churches, festivals, etc., on how to use the new machine; (2)public service announcements on television, radio, and billboards informing voters about the new system; and (3)blanketing the city with flyers and pamphlets explaining how to vote with the new machine. Ibid. at 5.

[30] "Election Reform in Detroit: New Voting Technology and Increased Voter Education Significantly Reduced Uncounted Ballots," Minority Staff, Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, Apr. 5, 2001, p. 1.

[31] Dan Gloger, voting technology expert with Melbourne Technical Services of Melbourne, Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 268-270.

[32] Dan Gloger, voting technology expert with Melbourne Technical Services of Melbourne, Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 268. *See also* the testimony of Shirley Knight, supervisor of elections for Gadsden County, who said that precinct counters are needed to "stop the high number of overvoted ballots. And that's the main thing I saw in the county, that we had just a tremendous high number of overvoted ballots, which I think disenfranchised voters of their opportunity to vote on the president." Shirley Knight, supervisor of elections for Gadsden County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 30.

[33] Drop off rate is the number of overvotes and undervotes added together. An overvote occurs when a person votes for too many candidates, thereby invalidating his or her ballot; an undervote occurs when a voter, for whatever reason, does not select a candidate for one or more office being voted on. Kimball Brace, election technology expert from Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 245, 284-285.

[34] Kimball Brace, election technology expert from Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 284-285, 268-269. The testimony suggests that the type of voting machine being used for the study was "optical scan," but the transcript is not entirely clear. Ibid.

[35] Christopher Edley, Jr., commissioner, U.S. Commission on Civil Rights, Tallahassee Verified Transcript, Jan. 11, 2001, p. 270.

[36] Kimball Brace, election technology expert from Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 270. It is estimated that, in the state of Florida, 26 percent of African American voters and 34 percent of white voters live in counties that verify ballots as valid immediately after they are cast. John Mintz and Dan Keating, "Spoilage Likelier for Blacks: Voting Machines, Confusion Cited," *The Washington Post* , December 3, 2000, P. A1.

[37] Ion Sancho, supervisor of elections for Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 12-13.

[38] Monroe County purchased the AccuVote system in 1993, and county election supervisor Harry Sawyer believes the system provides a fast, simple and secure means of conducting elections. The day before the vote, all machines and phone lines are tested for accuracy. During the vote, voters mark an optically readable paper ballot in the privacy of a voting booth. The ballot is inserted into the AccuVote tabulator that immediately reads the votes cast, adds them to the total for the precinct, and drops the ballot into the secured ballot box. Precinct results can then be transmitted to a host server for accumulation. The size of the lettering on the ballot is changeable, allowing large print for those with visual difficulties. In addition, the system can accommodate bilingual ballots for non-English speaking individuals. Finally, if the ballot is not properly filled out, the AccuVote reader will immediately "kick out" the ballot with an explanation of the problem—for example, overvotes. When a ballot is spoiled, the voter places it in a sealed envelope and is given a new ballot. At the end of the voting day, each AccuVote machine, at each precinct, is plugged into a phone line and the votes are uploaded to a computer located in the office of the county election supervisor. After the ballots are run, the system is confirmed for accuracy. Mr. Sawyer reported no problems for Monroe County during the November 7 general election. The AccuVote has a sealed memory card that cannot be tampered with, and a clerk and inspector validate the numbers and forms. *See* Staff Interview with Harry Sawyer, supervisor of elections for Monroe County, February 1, 2001, on file with U.S. Commission on Civil Rights, Washington, D.C.

[39] Ion Sancho, supervisor of elections of Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 48.

[40] Ion Sancho, supervisor of elections of Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 15.

[41] *See* Chart 8-1.

[42] *See* David Von Drehle, et. al, "A Wild Ride Into Uncharted Territory; Two Candidates Caught a Whiff of Defeat—and Then Rapidly Mobilized for a Recount War," *The Washington Post* , Jan. 28, 2001, p. A1.

[43] Theresa LePore, supervisor of elections for Palm Beach County, testified, "I basically use my own judgment and that of my staff to try to make the print a little bit larger for people that might have a problem reading." Theresa LePore, supervisor of elections for Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 72.

[44] Linda Howell, supervisor of elections for Madison County, testified that in the past, all ballots had to be certified by the state elections division. "Now," said Ms. Howell, "we're on our own to prepare a ballot." Linda Howell, supervisor of elections for Madison County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 25.

[45] *See* Appendix IV, excerpt from "Official Sample Ballot: Palm Beach County, Florida General Election," Nov. 7, 2000, prepared by Theresa LePore, supervisor of elections, Palm Beach County, Florida.

[46] Stephanie Desmon, "Judge Denies New Vote in Palm Beach," *The Baltimore Sun* , Nov. 21, 2000, p. 12A.

[47] Ibid.

[48] Matt Bai and Michael Isikoff, "Clouds Over the Sunshine State," *Newsweek* , Nov. 20, 2000, p. 16A. *See also* Fla. Stat. Ann. §§ 101.28 & 101.5606, prohibiting the use of voting systems or machines which permit the voter to cast a simultaneous ballot for two different candidates for a single office.

[49] Of the 29,702 spoiled ballots found in Palm Beach County, just over 19,000—or 63 percent—were "overvotes." *See* Kimball Brace, election technology expert from Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 249.

[50] Kimball Brace, election technology expert from Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 249.

[51] Kimball Brace, election technology expert from Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 258.

[52] Staff interview with Theresa LePore, supervisor of elections for Palm Beach County, Jan. 30, 2001, on file with U.S. Commission on Civil Rights, Washington, D.C.

[53] Joanna Carbone, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 107.

[54] Joanna Carbone, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 107.

[55] Joanna Carbone, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 107-108.

[56] Fla. Stat. ch. 101.5608 (2)(b) (2000) ("in no case shall a voter be furnished more than three ballots").

[57] Joanna Carbone, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 108.

[58] Millard Suid, poll worker in Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 130-131.

[59] Jim Dickson, vice president, National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 206.

[60] Jim Dickson, vice president, National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 206.

[61] Jim Dickson, vice president, National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 207.

[62] Jim Dickson, vice president, National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 207.

[63] Theresa LePore, supervisor of elections for Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 372.

[64] Rabbi Richard Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 28-29.

[65] Rabbi Richard Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 29.

[66] Rabbi Richard Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 9.

[67] Rabbi Richard Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 30.

[68] Rabbi Richard Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 47.

[69] Rabbi Richard Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 31-32. *See* Appendix IV.

[70] Kimball Brace, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 252.

[71] Kimball Brace, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 250.

[72] Kimball Brace, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 258.

[73] *See* Appendix I, "Population and voting characteristics of Florida counties, ranked by percentage of votes spoiled." *See also* The Governor's Select Task Force on Election Procedures, Standards and Technology, March 1, 2001, Chart 4, "Lost Votes? Blank or spoiled ballots in the last presidential election, by percentage," pp. 31-32.

[74] Rabbi Yellin, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 29-30.

[75] Jim Dickson, vice president, National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 207.

DRAFT STAFF REPORT ON

Voting Irregularities in Florida During the 2000 Presidential Election

(Not Official Unless and Until Approved by a Majority of the Commissioners)

Chapter Nine

Findings and Recommendations

The great majority of Americans…are uneasy with injustice but unwilling yet to pay a significant price to eradicate it. [1]

OVERVIEW

The U.S. Commission on Civil Rights conducted an extensive public investigation of allegations of voting irregularities occurring during the November 2000 presidential election in Florida. The investigation, utilizing the Commission's subpoena power, comprised three days of hearings, more than 30 hours of testimony, 100 witnesses, and a systematic review of more than 118,000 sheets of paper.[2]

Perhaps the most dramatic undercount in Florida's election was the nonexistent ballots of countless unknown eligible voters, who were turned away, or wrongfully purged from the voter registration rolls by various procedures and practices and were prevented from exercising the franchise.

While statistical data, reinforced by credible anecdotal evidence, point to widespread disenfranchisement and denial of voting rights, it is impossible to determine the extent of the disenfranchisement or to provide an adequate remedy to the persons whose voices were silenced in this historic election by a pattern and practice of injustice, ineptitude, and inefficiency.

Despite the closeness of the election, it was widespread voter disenfranchisement, not the dead-heat contest, that was the extraordinary feature in the Florida election. The disenfranchisement was not isolated or episodic.

State officials failed to fulfill their duties in a manner that would prevent this disenfranchisement.

The Commission does not adjudicate violations of the law, hold trials, or determine civil or criminal liability. Therefore, the recommendations that follow urge the U.S. Department of Justice and Florida officials to institute formal investigations based on the facts in this report to determine liability and to seek appropriate remedies.

The Commission is charged to "investigate allegations in writing under oath or affirmation relating to deprivations – (A) because of color, race, religion, sex, age, disability, or national origin; or (B) as a result of any pattern or practice of fraud; of the right of citizens of the United States *to vote and have votes counted* …."[3] The Commission is also charged with reporting its findings to the President and Congress as appropriate.[4] The uncontroverted evidence leads the Commission to the following findings and recommendations.

CHAPTER 1: VOTING SYSTEM CONTROLS AND FAILURES

Voting Disenfranchisement

Findings

- During Florida's November 2000 presidential election, restrictive statutory provisions, wide-ranging errors, and inadequate resources in the Florida election process denied countless Floridians of their right to vote.
- This disenfranchisement of Florida's voters fell most harshly on the shoulders of African Americans. Statewide, based on county-level statistical estimates, African American voters were approximately nine times more likely than white voters to have their ballots rejected in the November 2000 election.[5]
- Poorer counties, particularly those with populations of significant numbers of people were more likely to use voting systems with higher spoilage rates than more affluent counties with significant white populations. For example, in Gadsden County, the only county in the state with an African American majority, approximately one in eight voters was effectively disenfranchised. In Leon County, on the other hand, which is home to the prosperous state capital and two state universities, fewer than two votes in 1,000 were not counted. In Florida, of the 100 precincts with the highest numbers of disqualified ballots, 83 of them are majority-black precincts.
- Even in counties where the same voting technology was used, blacks were far more likely to have their votes rejected than whites.
- The recently enacted election reform law mandates that a county must use an electronic or electromechanical precinct-count tabulation voting system and that as of September 2, 2002, a voting system that uses a device for the punching of ballots by the voter may not be used in Florida.

DRAFT STAFF REPORT ON

Voting Irregularities in Florida During the 2000 Presidential Election

(Not Official Unless and Until Approved by a Majority of the Commissioners)

Epilogue

INTRODUCTION

Within days of receiving allegations of voter disenfranchisement during the November 7, 2000, elections, the U.S. Commission on Civil Rights began a preliminary investigation of the allegations of voting irregularities occurring in the state of Florida. As the Commission's investigation was in progress, the governor also appointed a special task force to investigate the alleged election irregularities and suggest possible reforms to the Florida election laws.[1] The task force was mandated to complete its study by March 1, 2001. After the Commission's hearings in January and February, the secretary of state presented a proposal to revamp the state's voting systems. The Florida House of Representatives and Florida Senate also began to consider legislation that had the potential of reforming and improving the state's voting system. The Florida legislature ultimately passed comprehensive election reform legislation, the Florida Election Reform Act that was signed into law by Governor Jeb Bush on May 9, 2001.[2]

Governor Bush's Select Task Force

On December 14, 2000, Florida's Governor Jeb Bush issued an Executive Order creating the Select Task Force on Election Reform.[3] The task force would study election procedures, standards and technology, and would propose ways to improve the quality and accuracy of elections throughout the state. The Select Task Force co-chairman, Jim Smith, originally believed that Governor Bush wanted the task force to be focused on technology.[4] Subsequent to the Commission's announcement that it would hold hearings to investigate the allegations of election improprieties, the scope of the task force's investigation expanded. Governor Jeb Bush appeared as a witness and was questioned by Commissioners about the scope of his Select Task Force. The governor confirmed that the task force was charged with investigating all questions raised by the November 7, 2000, presidential election.[5] On March 1, 2001, the Governor's Select Task Force published its conclusions in an 80-page report, which includes 35 specific recommendations.[6] The proposals range from minimum standards for voter education to expanding the time between an election and the certification of the results of that election.[7]

Secretary of State's Proposed Reforms

After testifying before the Commission on January 12, 2001 about her limited involvement in election matters,[8] Florida Secretary of State Katherine Harris subsequently proposed a three-year, $200 million plan to modify the voting system.[9] She suggested leasing optical-scan voting systems before the 2002 elections and then urged the legislature to consider changing to touch screen systems before 2004.[10]

THE FLORIDA LEGISLATURE'S PROPOSED REFORMS

In the aftermath of the presidential election and the Commission's ongoing investigations, there were numerous bills and resolutions considered by the Florida state legislature.[11] Many of these legislative proposals were eventually consolidated into one bill. On May 4, 2001, the Florida legislature passed Senate Bill 1118, the Florida Election Reform Act of 2001, and on May 9, 2001, Governor Jeb Bush signed the bill into law. To place what ultimately passed in some perspective, this report will provide a brief discussion of the proposed changes that were considered by the Florida legislature.

Absentee Voting and Military/Overseas Voting

There were 10 Senate bills that discussed potential changes in casting and tabulating absentee ballots.[12] Senate Bill 1150[13] and its counterpart, House Bill 749,[14] would have eliminated the requirement that a person requesting an absentee ballot disclose his or her social security number as well as the requirement that the last four digits of the elector's social security number be on the ballot for it to be tabulated.[15] Although these bills would simplify the absentee ballot process,[16] they appear to be inconsistent with earlier legislation passed to eliminate voter fraud after the problems that arose with absentee voting in the 1997 City of Miami mayoral election.[17] Indeed, some Senators took the position that the former rules should be enforced.

Election Day Registration

The Commission also received testimony from Floridians who believed that they properly registered to vote but were turned away on Election Day because their names did not appear on the voter rolls.[18] Senate Bill 1574 proposed

> that registration books be open on Election Day during the time election polls are open and at other times during the regular office hours of the supervisor of elections.[19]

Senate Bill 1590 proposed that voters be permitted to register and request absentee ballots on-line.[20] Senate Bill 1950[21] and House Bill 673[22] proposed that each school district establish voter registration programs that offer eligible high school students the opportunity to register to vote and/or update their voter registration records at least once a year.

Former Felons

Senate Bill 152, entitled "Felons' Right to Vote," called for the automatic restoration of convicted felons voting rights one year after the completion of the sentence, unless objected to by a majority of the Board of Executive Clemency. [23] Senate Bill 404[24] and House Bill 51[25] would have created the "Citizens' Empowerment Act," which would have mandated the automatic restoration of former felons voting rights following completion of sentence of incarceration and community supervision. The bill would have also required the Department of Corrections to complete any necessary paperwork and file it with the Board of Executive Clemency.[26] This act required

> that a convicted felon who is incarcerated or is on probation, parole, or community control may not vote, it provides for restoration of that right one year after completion of the sentence, unless automatic restoration is objected to by a majority of the Board of Executive Clemency.[27]

Florida Senate Joint Resolution 406[28] and House Joint Resolution 49[29] would have amended Section 4 of Article VI of the State Constitution as it relates to the rights of convicted felons to vote.[30] The Florida House of Representatives had only one bill directly relating to the rights of former felons to vote.[31]

Language Assistance and Individuals with Disabilities

Assistance to those with limited English proficiency was another issue on which the Commission heard testimony during its investigation.[32] House Bill 173[33] proposed to make it easier for Floridians who do not speak English to register to vote and to vote. The bill revises the information mandated for the statewide uniform registration form and requires that the registration forms be available in languages other than English, including Spanish and Creole. Under this bill, voting assistance would have been provided for a member of a language minority group, if the group constituted more than one percent of the county's population.[34]

House Bill 173 proposed to require precinct workers to permit voters whose primary language is not English to receive assistance in individual voting booths while voting. Any person who is eligible to register and who is unable to read or write, whose primary language is other than English, or who, because of some disability, needs assistance in voting shall upon that person's request be registered by the supervisor under the procedure prescribed by this section and shall be entitled to receive assistance at the polls under the conditions prescribed by this section.[35]

Poll Closings

Senate Bill 748[36] proposed uniform closing of polls across the state. Specifically, the bill provided for opening polls at 7:30 a.m. Eastern Standard Time and 6:30 a.m. Central Standard Time and for closing polls at 7:30 p.m. Eastern Standard Time and 6:30 p.m. Central Standard Time.

Provisional Ballots

Senate Bill No. 1118 included a provision that would create procedures for casting and counting provisional ballots. [37] The bill would require verification of a voter's eligibility if the voter's name was not on the precinct register. The bill would also permit a voter who requests an absentee ballot, then appears at the polls on Election Day, to vote through a provisional ballot, if the absentee ballot has not been submitted.[38]

Purging of Voters

Senate Bill 1739[39] which would have eliminated the statutory obligation to have the voter "purge" lists developed by a private contractor and restored the roles of the Florida Department of Law Enforcement, the Board of Executive Clemency, and the Office of Vital Statistics in directly furnishing information to the supervisors of elections that relates to the rights of citizens to vote.[40]

Voters' Bill of Rights

The Voting Rights Bill was originally proposed as Senate Bill 2098.[41] It proposed a 10-point list of a voter's rights. It, like many proposals, was incorporated into the Election Reform Act.[42]

THE NEW LAW- THE FLORIDA ELECTION REFORM ACT OF 2001

The new Election Reform Act is a comprehensive, 102-page piece of legislation that combined aspects of several bills considered by the Florida state legislature.[43] The act makes major changes to the elections laws of the state in areas of concern addressed by the Commission during the hearings in Tallahassee and Miami, including absentee ballots, ballot uniformity, poll worker training and education, provisional ballots, the purging of voters from voting lists, voter education, and voting system modernization. The act, however, was silent on several areas of concern that were raised by the Commission at the hearings, including, Election Day registration, former felon's voting rights, language assistance, and roadblocks. The following discussion is a brief review of some of the key provisions of the new law.

Absentee Voting and Military/Overseas Voting

The use of absentee ballots within certain segments of the Florida population was an area of inquiry at the Commission hearings.[44] The Election Reform Act includes provisions that eliminate the need to provide social security numbers or voter identification numbers on absentee ballots.[45] Moreover, the act redefines "absent elector" to include any qualified voter who casts a ballot.[46]

Poll Closings

The Election Reform Act calls for a study by the Division of Elections and the Florida State Association of Supervisors of Elections into the potential benefits and drawbacks of having uniform poll opening and closing times throughout the state.[47]

Poll Workers

The Election Reform Election Act creates an entire section specifically dedicated to poll worker recruitment and training.[48] The act requires the supervisor of elections to ensure minimum amounts of poll worker training and education, and requires the Division of Elections "to distribute the sum of $5,949,375 in fiscal year 2001–2002 to the counties to fund comprehensive voter education programs and poll worker recruitment and training programs provided in the act."[49] The law makes clear, however, that "no county shall receive any funds under that provision until the supervisor of elections provides the Department of State a detailed description of the voter education-education programs to be implemented … for the 2002 election cycle."[50]

Provisional Ballots

The inability of voters to cast provisional ballots when their registration status could not be confirmed by the supervisors of elections offices was a topic of significant testimony at the Commission hearings.[51] The Election Reform Act allows for voting by provisional ballot but states that if the voter is registered in a different precinct from the one in which the ballot is cast, then the provisional ballot will not be counted.[52]

Purging of Voters

The Election Reform Act creates a new section of the Election Code in Section 98.0977. The new provisions mandates the creation of the statewide voter registration database.[53] The act provides that "the [Department of State] may contract with the Florida Association of Court Clerks to analyze, design, develop, operate and maintain a statewide on-line voter registration database and associated web site, to be fully operational statewide by June 1, 2002."[54] The database will contain all of the voter registration information from each of the 67 supervisors of elections in the state, and will be on-line. The Election Reform Act repealed Section 98.0975 entirely, which called for the state to contract with a private entity to maintain the state's voter registration lists.[55]

Uniform Ballots

The Election Reform Act amends Section 101.151 to define, in detail, the specifications for ballots.[56] For example, it addresses the issue of uniformity of the ballot: "(b) The department rules shall graphically depict a sample uniform primary and general election ballot form for each certified voting system."[57]

Voting Systems

The Election Reform Act de-certifies punch card machines[58] and at the same time certifies touch-screen systems.[59] It authorizes the distribution of $7,500 per precinct for counties with population of 75,000 or less and $3,750 per precinct for all other counties.[60] Moreover, the act requires second chance technology, i.e., scanners at the precinct level that would determine whether voters made mistakes, specifically overvotes or undervotes, and allow voters to correct those mistakes.[61]

Voter's Bill of Rights and Responsibilities

The Election Reform Act legislation requires a 10-point list of voter's rights be published and posted inside every precinct in the state. The Voter's Bill of Rights provides that each registered voter has the right to:

1. Vote and have his or her vote accurately counted.
2. Cast a vote if he or she is in line when the polls are closing.
3. Ask for and receive assistance in voting.
4. A replacement ballot if he or she has voted in error.
5. An explanation if his or her registration is in question.
6. If his or her registration is in question, cast a provisional ballot.
7. Prove his or her identity by signing an affidavit if election officials doubt the voter's identity.
8. Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.
9. Vote free from coercion or intimidation by elections officers or any other person.
10. Vote on a voting machine that is in working condition and that will allow votes to be accurately cast.

The Election Reform Act includes a list of voter responsibilities.[62] Voter's responsibilities include:

1. Study and know candidates and issues.

2. Keep his or her voter address current.
3. Know his or her precinct and its hours of operation.
4. Bring proper identification to the polling station.
5. Know how to operate voting equipment properly.
6. Treat precinct workers with courtesy.
7. Respect the privacy of other voters.
8. Report problems or violations of election law.
9. Ask questions when confused.
10. Check his or her completed ballot for accuracy.

CONTINUING ISSUES?

Former Felons

The Commission heard testimony and secured documents on the issue of felon disenfranchisement.[63] In some states, individuals convicted of felonies retained their rights to vote or had them automatically restored upon completion of their felony sentence. In the past, Florida required these individuals to apply for clemency in order to vote in Florida. Some civil rights organizations have charged that this practice was unconstitutional.[64] Seven days after the Commission's Miami hearing, the Florida Office of Executive Clemency issued a letter revising the state's policy on this issue so that individuals need not apply for restoration of civil rights in Florida.[65]

While the Senate voted for the automatic restoration of ex-offenders voting rights, the House Speaker Tom Feeney rejected automatic restoration of convicted felons' voting rights.[66] In the alternative, House legislators supported an easier process for applying for restoration of voting rights.[67] The Florida legislature ultimately rejected changes that would have allowed for the automatic restoration of convicted felons voting rights and none of the changes included in the Election Reform Act address the voting status of former felons.

Language Assistance and Individuals with Disabilities

The Election Reform Act proposes no changes to assist individuals whose first language is not English, or specifically Spanish or Creole, in casting their votes. Likewise, the Election Reform Act proposes no specific changes to assist individuals with disabilities.

Election Day Registration

While the Election Reform Act eases registration for military personnel who are unable to register because they are overseas,[68] the act does little to improve the process by which other Floridians, particularly individuals whose first language is not English, may register and vote.

Absentee Ballots

The Election Reform Act, in trying to correct one problem, has reopened the door to past abuses of the absentee ballot. By not requiring the requestor or the elector to provide social security numbers on ballots, the Election Reform Act ignores a potential fraud problem in absentee voting.[69] Moreover, persons who present themselves at the poll must provide identification; absentee voters are not required to present identification.

CONCLUSION

The Election Reform Act of 2001 must be viewed as a much-needed positive step toward ensuring Floridians the right to vote. The Florida legislature attempted to address some of the major problems presented by the failure of the voting procedures and systems in the November 7, 2000, presidential election.[70] The new law has provisions that reform and improve absentee voting, military and overseas registration and voting, poll worker education and training, and the voter registration maintenance system. It also provides for restricted use of provisional balloting.

Despite this positive change only time will tell if this legislation will truly be effective. Much depends on how its provisions will be implemented by local leaders and state officials. We still do not know whether adequate resources are budgeted by the state and local governments to ensure the law's effectiveness.[71] Several million dollars have been authorized for voter education, poll worker selection and training and new machinery;[72] it remains to be seen whether it is enough to equip all voters, rural and urban with the best machinery to ensure that their votes will be correctly tallied.

There are several important issues that were not addressed by this legislation. The failure to address these issues will continue the legacy of disenfranchisement. These include the failure to extend voting rights to former felons, the lack of required language assistance to non-English-speaking voters, and the failure to provide meaningful voting assistance to individuals with disabilities. Additionally, Florida's new election law still provides no meaningful process for a person whose rights to vote on Election Day is denied to challenge that denial.

Ultimately, the success or failure of Florida's election reform efforts will depend on the leadership that is provided by Florida's highest elected officials. The Commission hopes that the lessons learned from the November 2000 election will lead to the effective implementation of long lasting reforms throughout the state that send a clear message throughout the county of the importance of the right to vote and the consequences of its denial.

[1] Collins Center for Public Policy, "Revitalizing Democracy in Florida: The Governor's Select Task Force on Election Procedures, Standards and Technology," Exec. Order No. 00-349, December 14, 2000 <http://www.collinscenter.org> (Apr. 24, 2001), p. 4.

[2] Brad Hahn, "Florida overhauls balloting; Gov. Bush signs bill to modernize," *Chicago Tribune* , May 9, 2001.

[3] Collins Center for Public Policy, "Revitalizing Democracy in Florida: The Governor's Select Task Force on Election Procedures, Standards and Technology," Exec. Order No. 00-349, December 14, 2000 <http://www.collinscenter.org> (Apr. 24, 2001), p. 4.

[4] Jim Smith Testimony, Select Task Force on Election Reform, Tallahassee, Jan. 9, 2001, p. 480.

I'm happy to go anywhere and, really, do anything, but I think we really need to think about what the Governor asked us to do. We're here at his invitation. And he really didn't ask us to go hold public hearings. He asked us to look at, you know, the standards, procedures and technology.

Ibid.

[5] John Ellis Bush, Governor of the state of Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 108. Question from Edward A. Hailes, general counsel: "Have you put any restrictions on the work of the task force, apart from the time frame in which they are to report back to you?" John Ellis Bush's answer: "No, it's fairly flexible." Ibid.

[6] Collins Center for Public Policy, "Revitalizing Democracy in Florida: The Governor's Select Task Force on Election Procedures, Standards and Technology," Mar. 2001, <http:www.collinscenter.org/usr_doc/52816.doc>(Apr. 24, 2001), p. 17.

[7] Collins Center for Public Policy, "Revitalizing Democracy in Florida: The Governor's Select Task Force on Election Procedures, Standards and Technology," Mar. 2001, <http:www.collinscenter.org/usr_doc/52816.doc>(Apr. 24, 2001), pp. 70-77.

[8] *See* Chapter Three discussion.

[9] Press Release, Florida Department of State, "The Honorable Katherine Harris, Congressional Testimony- Election Reform (Apr. 25, 2001) (on file with author). Mark Hollis, "Official Urges High-Tech New Voting System for Florida," *Chicago Tribune* , Wednesday, Mar. 21, 2001. "'How can we confirm the principles of freedom if we're shackled by outdated technology and processes that have grown passé?' Harris said Tuesday in announcing her $200 million three-year plan." Ibid.

[10] Press Release, Florida Department of State, "The Honorable Katherine Harris, Congressional Testimony- Election Reform (Apr. 25, 2001) (on file with author). Mark Hollis, "Official Urges High-Tech New Voting System for Florida," *Chicago Tribune* , Wednesday, Mar. 21, 2001. Katherine Harris presented this proposal on April 25, 2001 when she testified in front of the House of Representatives Committee on House Appropriations at its hearings on Election Reform along with the four other secretaries of state: The Honorable J. Kenneth Blackwell, Ohio secretary of state, The Honorable Sharon Priest, Arkansas secretary of state, the Honorable Rebecca Vigil-Giron, New Mexico secretary of state, and the Honorable Ron Thornburgh, Kansas secretary of state. U.S. Congress, House, Committee on House Appropriations, Hearing on Election Reform, 107th Congress, 1st Sess., 2001, <http://www.house.gov/cha/business/042501testimonies/9.pdf>.

[11] The past election has also spurred the U.S. Congress into considering election reform. "Democrats Seek Voting Rights Update," *Associated Press* , (March 18, 2001). Senator Chris Dodd (D-Conn.) and Representative John Conyers (D-Mich) have co-sponsored a bill that would allocate 3.5 billion dollars to assist states in adopting uniform standards for election equipment by the year 2004. "Democrats Seek Voting Rights Update," *Associated Press* , (March 18, 2001). The bill would also require states to permit "provisional voting." The Dodd-Conyers proposal, however, is just one of many before members of both houses of the U.S. Congress. Senator Charles Schumer (D-N.Y.) and Senator Sam Brownback (R-Kan.) have co-sponsored a bill would provide 2.5 billion dollars and create a commission, which would become responsible for drafting new voting procedures. "Democrats Seek Voting Rights Update," *Associated Press* , (March 18, 2001). Likewise, Senators John McCain (R-Ariz.) and Fritz Hollings (D-S.C.) are pushing efforts for voluntary standards which would improve voting accuracy, voter education, and voting machinery and Representative Asa Hutchinson (R-Ark.) is sponsoring a 1.5 billion bill. "Democrats Seek Voting Rights Update," *Associated Press* , (March 18, 2001). These federal proposals could have a major impact on the manner in which Americans cast vote in future elections.

[12] S.B. 200, 103rd Reg. Sess. (Fla. 2001). S.B. 448, 103rd Reg. Sess. (Fla. 2001). S.B. 748, 103rd Reg. Sess. (Fla. 2001). S.B. 1150, 103rd Reg. Sess. (Fla. 2001). S.B. 1252, 103rd Reg. Sess. (Fla. 2001). S.B. 1308, 103rd Reg. Sess. (Fla. 2001). S.B. 1420, 103rd Reg. Sess. (Fla. 2001). S.B. 1590, 103rd Reg. Sess. (Fla. 2001), S.B. 1660, 103rd Reg. Sess. (Fla. 2001), S.B. 1712, 103rd Reg. Sess. (Fla. 2001).

[13] S.B. 1150, 103rd Reg. Sess. (Fla. 2001). Senator Durrell Peaden, Jr. sponsored this bill.

[14] *See* H.B. 749, 103rd Reg. Sess. (Fla. 2001). Senator Paula Bono Dockery sponsored this bill.

[15] H.B. 749, 103rd Reg. Sess. (Fla. 2001).

[16] By eliminating the possibility of error, e.g., someone forgetting to place his or her social security number on a ballot or placing the wrong social security number on a ballot, the changes would make it easier for persons voting absentee to vote correctly and have that ballot counted.

[17] Fla. Stat. ch. 97-053(5) (1999). *See also* Jay Weaver, "Vote Reform Back to Square One: Justice Department Ruling Means that State Legislators Must Draft New Law," *Sun-Sentinel (Fort Lauderdale)* , Aug. 23, 1998. In this article, Weaver notes that the law passed by the state "requires people to show a photo ID when they vote at the polls and to write the last four digits of their Social Security number on absentee ballot envelopes." Ibid.

[18] *See* Chapter Two discussion.

[19] S.B. 1574, 103rd Reg. Sess. (Fla. 2001). Senator Kendrick Meek sponsored this bill.

[20] S.B. 1590, 103rd Reg. Sess. (Fla. 2001). Senator Darryl L. Jones sponsored this bill.

[21] S.B. 1950, 103rd Reg. Sess. (Fla. 2001). Senator Darryl L. Jones sponsored this bill.

[22] H.B. 673, 103rd Reg. Sess. (Fla. 2001). Representative Frederica S. Wilson sponsored this bill.

[23] S.B. 152, 103rd Reg. Sess. (Fla. 2001). Senator Mandy M. Dawson sponsored this bill.

[24] S.B. 404, 103rd Reg. Sess. (Fla. 2001). Sens. Darryl L. Jones and Kendrick Meek sponsored this bill.

[25] H.B. 51, 103rd Reg. Sess. (Fla. 2001). Representative Christopher Smith sponsored this bill.

[26] S.B. 404, 103rd Reg. Sess. (Fla. 2001), H.B. 51, 103rd Reg. Sess. (Fla. 2001).

[27] H.B. 51, 103rd Reg. Sess. (Fla. 2001).

[28] S.J.Res. 406, 103rd Reg. Sess. (Fla. 2001). Representative Jerry Paul sponsored this bill.

[29] H.J.Res. 49, 103rd Reg., Sess. (Fla. 2001). Representatives James Harper Jr. and Phillip Brutus were the chief sponsors of this resolution.

[30] There have been some allegations in the press that efforts by the state to restrict the rights of convicted felons to vote were specifically aimed at depressing the voting of minorities, particularly African Americans and Latinos, who are convicted of felons in disproportionately to their representation in society. Gregory Palast, "Florida's Disappeared Voters': Disfranchised by the GOP," *The Nation* , (Feb. 5, 2001). This bill would amend Article VI to permit convicted felons to vote after having their rights restored.

[31] H.B. 51, 103rd Reg. Sess. (Fla. 2001). Representative Christopher L. Smith sponsored this bill.

[32] Please see Chapter Six *infra* for further discussion.

[33] H.B. 173, 103rd Reg. Sess. (Fla. 2001). Representative Philip Brutus sponsored this bill.

[34] H.B. 173, 103rd Reg. Sess. (Fla. 2001).

[35] H.B. 173, 103rd Reg. Sess. (Fla. 2001).

[36] S.B. 748, 103rd Reg. Sess. (Fla. 2001). The Ethics Committee and Senator Charlie Clary sponsored this bill.

[37] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001). The Committee on Ethics and Elections and Senator Bill Posey sponsored this bill.

[38] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001).

[39] S.B. 1739, 103rd Reg. Sess. (Fla. 2001). The Fiscal Responsibility Council and Representative Randy Johnson sponsored this bill.

[40] S.B. 1739, 103rd Reg. Sess. (Fla. 2001).

[41] S.B. 2098, 103rd Reg. Sess. (Fla. 2001). Senator Darryl L. Jones sponsored this bill.

[42] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 82.

[43] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001).

[44] *See* Chapter Two discussion.

[45] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 78.

[46] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 33.

[47] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 102.

[48] *See* section 102.014, The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), pp. 85-87

[49] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 95.

[50] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 95.

[51] *See* Chapter Two discussion.

[52] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 41.

[53] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), pp. 90-93.

[54] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), pp. 90-93.

[55] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 95.

[56] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), pp. 5-10.

[57] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 9.

[58] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 15. "Section 17. Effective September 2, 2002, a voting system that uses an apparatus or device for the piercing of ballots by the voter may not be used in this state." *Id* .

[59] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 14. (4) "'Electronic or electromechanical voting systems'" means a system of casting votes by use of voting systems devices or marking a system of casting voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment, and the term includes touchscreen systems." *Id.*

[60] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 96.

[61] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 16.

[62] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 82.

[63] David Ruppe, "Florida Changes policy on Ex-Felons' Voting Rights: Government practice may have been a factor in Bush victory," (Mar. 26, 2001). Please see Chapter Five *infra* for further discussion. http://www.abcnews.com.go.com/sections/us/DailyNews/floridafelonvote_010321.html.

[64] David Ruppe, "Florida Changes policy on Ex-Felons' Voting Rights: Government practice may have been a factor in Bush victory," (Mar. 26, 2001). Please see Chapter Five *infra* for further discussion. <http://www.abcnews.com.go.com/sections/us/DailyNews/floridafelonvote_010321.html>.

[65] Letter from Janet H. Keels, coordinator for the Office of Executive Clemency to Ed Kast, assistant director, Division of Elections, Tallahassee, FL, February 23, 2001.

[66] Mark Silva, "Election Overhaul is Approved," *The Miami Herald,* (May 3, 2001).

[67] Mark Silva, "Election Overhaul is Approved," *The Miami Herald,* (May 3, 2001).

[68] The Florida Election Reform Act of 2001, S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 66. The act allows for late registration for military personnel and their family members who have been overseas, but for no one else, e.g., a student studying abroad or a Peace Corp volunteer.

[69] Thomas B. Edsall, "A Long Road for Election Reform," *Washington Post* , (May 9, 2001). "Hans A. von Spakovsky, a Republican member of the Fulton County Board of Registrations and Elections in Georgia, was sharply critical of election reforms that provide easier use of absentee ballots. Von Spakovsky argued that absentee ballots make voter fraud simpler because 'multiple registration and multiple votes' are far more accessible and much more difficult to regulate." Ibid.

[70] See Appendix V for a general overview of proposed and implemented changes.

[71] For this reason, the Commission has made a commitment to continue its investigation. The Commission "will travel to Florida to assess the impact of the legislation and to encourage appropriate distribution of resources to eliminate the well-publicized difficulties that were experienced in the last election." *See* Commission statement approved and released May 4, 2001.

[72] S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 95-96.